

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.14567 of 2012
and
MP.Nos.1 and 2 of 2012

S.Flora ... Petitioner

Vs.

1.The District Elementary Education Officer,
DEO Office, Erode.

2.The Additional Assistant Elementary
Educational Office,
Kundadam, Erode District.

3.The Commissioner,
Panchayat Union,
Kundadan, Erode District.

4.The Head Master / Mistress,
Panchayat Union Middle School,
Kangeyampalayam,
Kangeyam Taluk, Erode District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the respondent pertaining to the impugned rejection order in Na.Ka.No.2847/A3/03.06.2010 given by the 1st respondent and quash the same and consequently to direct the respondents to regularize the service of the petitioner as notional manner and further to direct the respondents to give retirement benefits and pension under the Tamil Nadu Pension Rules 1978.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.M.Dig Vijayapandian
Additional Government Pleader

O R D E R

The petitioner has filed this petition to issue a Writ of Certiorarified Mandamus, to call for the records from the respondent pertaining to the impugned rejection order in Na.Ka.No.2847/A3/ 03.06.2010 given by the 1st respondent and quash the same and consequently to direct the respondents to regularize the service of the petitioner as notional manner and further to direct the respondents to give retirement benefits and pension under the Tamil Nadu Pension Rules 1978.

2.It is the case of the petitioner that she was appointed as Craft Teacher on 03.10.1973 in the 4th respondent school. That in pursuant of her appointment the Additional Assistant Educational Officer, Kundadam the respondent herein had opened service register and the petitioner's salary was periodically revised by the respondent and she retired from service on account of superannuation in the year 2002 on 31.10.2002. It is the duty of the respondent to regularize petitioner's service as contemplated under G.O.Ms.No.22, dated 28.02.2006. Thereupon the petitioner made a representation on 30.07.2008 to the respondents herein to confer with her the benefits of G.O.Ms.No.22, dated 28.02.2006.

3.However, the respondents refused the claim of the petitioner to extend the benefits of said GO and thereby refused to entertain the petitioner's claim for retirement benefits through the impugned proceedings herein in Na.Ka.No.5767/A4/2008 dated 16.08.2007, 04.01.2008 and 03.06.2010. Hence, challenging the same the present writ petition.

4.I heard Mr.P.Vijendran, learned counsel for the petitioner and Mr.M.Dig Vijayapandian, learned Additional Government Pleader for the respondents and perused the entire records.

5.The Learned Counsel for the petitioner would contend that the respondents ought to have regularized petitioner's service that she joined service under the 4th respondent as early as on 03.10.1973. Having rendered 29 years of service, if her service was regularized she would be automatically eligible for the benefits conferred under the above GO. The petitioner service should have been regularized in view of the G.O.Ms.No.252 dated 28.02.2006. When that the respondent had periodically revised petitioner's salary, the petitioner's claim for pension and other retirement benefits are legitimate.

6.While that the above said G.O. specifically states that one who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with service condition prescribed the respondent should have extended the benefits to the petitioners also.

7.Per Contra, the Learned Counsel for the respondent by filing counter contended that the petitioner was appointed as part time craft teacher on 03.10.1973 with the Educational qualification of 8th standard and with TTC. In the year 1986 the Government issued G.O.Ms.No.1366 dated 05.09.1986 that the minimum general educational qualification for the post of full time craft teachers working in the middle school was raised as SCLC pass and their scale of pay was also revised. In so far as the full time craft teachers with 8th standard qualification, they were allowed for a period of 3 years to qualify themselves and after that they shall be entitled for secondary grade pay till such time they will draw the pay of Higher Grade Teachers.

8.In the year 1994 the Government issued G.O.Ms.No.224 dated 24.03.1994 for conversion of qualified part-time craft teachers into full time teachers and absorption in secondary grade vacancies before that the part time craft teachers will be given three months training course in the District Institute of Teaching Education and Training (DIETS) of various districts, as has been done previously before promoting Higher Grade Teachers to Secondary Grade posts on time scale of pay against existing vacancies on temporary basis under Rule 10(a) 1 of General Rule for Tamil Nadu State and Subordinate Services. Accordingly 500 qualified part time Craft Teachers were given training in three phases accordingly they were inducted in the full time craft instructors and they were given time scale of pay.

9.In the case on hand the petitioner has not under gone any training and retired as part time craft teacher. Till her retirement she had never ever sent any representation with regard to conversion of her post from part to full time and to undergo the training. Moreover without exhausting appeal remedy vested with the Director of Elementary Education or with the Government the petitioner cannot maintain this writ petition. Hence prays for dismissal of the writ petition.

10. At this juncture the Learned Counsel for the petitioner cited a decision of this Court made in the matter of R. Barathy vs. The Director Of Elementary & Others reported in CDJ 2017 MHC 4573, wherein in a writ petition seeking for regularization of service of the petitioner therein in the post of full-time Secondary Grade Pre- vocational Instructor (Craft Teacher) from the date of approval in the post of part-time Craft Teacher i.e., on 06.06.1984, as done to similarly placed teachers who were regularized in pursuance of G.O.Ms.N0.224, Education, Science and Technology Department, dated 24.03.1994 and her juniors in pursuance of G.O.Ms.N0.35 School Education (VE) Department, dated 09.02.2007 and for other consequential monetary and promotional service benefits it was held as following that

"As pointed out by this Court, the Government Order namely G.O.Ms.No.244, which prescribes three months training does not have any statutory backing. The fixing of a refresher course or training can be done in the event of Government deciding to accommodate any person who is not qualified in accordance with the rules. In the case on hand, the petitioner was fully qualified for appointment to the post of full-time Craft Teacher in the year 1984 and she was appointed as part-time Craft Teacher.

8. Therefore the Writ Petition is allowed and a Writ of Mandamus is issued directing the authorities concerned to consider the claim of the Petitioner for regularization in terms of the statutory rules governing the service conditions. It is also made clear that the authorities concerned shall consider the request of the Petitioner keeping in view the long service rendered by the Petitioner for almost 35 years on a meager and consolidated salary of Rs.220/- p.m. The authorities while considering the claim of the Petitioner may also bear in mind the power under Section 20(3) which enables relaxation of any rule to enable up-gradation of the Petitioner from part-time to full-time Craft Teacher."

11. Hearing upon the rival submissions and on careful perusal of the available records it is found that the above decision relied by the petitioner aid the petitioner in so far as to countenance and make the argument of the respondent that the petitioner has not undergone any training and retired as part time craft teacher and hence she is not eligible to the relief as unsustainable and does not have legal sanctity. However this Court is able to see that the case referred by above pertains to person who was under service at that relevant

point of time. Whereas in the case on hand admittedly the petitioner had retired from service as early in the year 2002 itself.

12. At the same time, in so far as the claim of the respondents that the petitioner had not made any efforts to claim for regularization during her Service, this Court is unable to accept the same in view of the fact that above G.O. conferring such benefit of Regularization came to be issued only in the year 2006 and only thereafter quiet naturally she had prayed for the above relief on par with that of persons who served as part time Craft Teachers for more 10 years for a meager salary. Admittedly page No.9 of the Typed Set of papers filed by the petitioner disclose a proceeding of the 1st respondent dated 16.08.2007 revealing that the petitioner had filed her claim in the year of 2007 itself. Therefore this Court finds no laches or delay on the part of the petitioner as alleged by the respondents.

13. Now on careful perusal of the impugned Order it visualized that excepting a lame reason that there is no rules enabling the respondent to entertain the claim of the petitioner, there is no reference as to what are the relevant rules or either rules provide for any relaxation or appeal remedy. It is further shocking that it is a proceedings issued by the office of the 1st respondent in view of a query as to the status of application made by the petitioner. Absolutely there is no reason assigned or any reference made by the respondent with regard to rules or the Service particulars of the petitioner. As such this Court has no hesitation to set aside the same. Accordingly the impugned order is hereby set aside.

14. In view of the facts involved in the case and by taking into account of the old age of the petitioner besides taking account that she had rendered 29 years of Service for a meager salary, hence in line with the direction issued by this Court in the matter of R.Barathy vs. The Director Of Elementary & Others holding as following that

"It is also made clear that the authorities concerned shall consider the request of the Petitioner keeping in view the long service rendered by the Petitioner for almost 35 years on a meager and consolidated salary of Rs.220/- p.m. The authorities while considering the claim of the Petitioner may also bear in mind the power under Section 20(3) which

enables relaxation of any rule to enable up-gradation of the Petitioner from part- time to full-time Craft Teacher."

15. There shall be a similar direction to the respondents that they shall consider the claim of the Petitioner afresh keeping in view her long service rendered for about 29 years and shall also consider for relaxation of any rule as far as petitioner is concerned after due verification as to whether such relaxation was provided to any other similarly placed person. It is made clear that the respondents shall not reject petitioner's claim on ground of laches or delay.

16. In the result:

(a) the Writ Petition stands allowed and the impugned order in Na.Ka.No.2847/A3/03.06.2010, is hereby set aside;

(b) the respondents shall consider the claim of the Petitioner within a period of 12 weeks from the date of receipt of the copy of this order, after due notice to the petitioner and by offering a Personal hearing enabling her to produce relevant records if any to substantiate her claim for regularising her service in the 4th respondent school as Craft Teacher;

(c) on passing orders, the respondents 1 to 3 are directed to disburse the service retirement benefits and pension. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The District Elementary Education Officer,
DEO Office, Erode.

2.The Additional Assistant Elementary
Educational Office,
Kundadam, Erode District.

3.The Commissioner,
Panchayat Union,
Kundadan, Erode District.

W.P.No.14567 of 2012
and
MP.Nos.1 and 2 of 2012

RRK(12/03/2018)



WEB COPY