

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DELIVERED ON : 08.06.2018

CORAM:

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

W.P.No.376 of 2013

P.Arunachalam

.. Petitioner

Vs.

1. The Secretary,
R.K. Sree Rangammal Kalvi Nilayam
Higher Secondary School,
Coimbatore-641 018.

2. The District Educational Officer,
Coimbatore – 641 001.

3. The Secretary to Government,
Department of School Education,
Secretariat, Chennai-09.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to submit the pension and terminal benefit proposals of the petitioner to the second respondent and as a consequential relief direct the second respondent to settle the pension cum retiral benefits with interest forthwith.

For Petitioner : Ms.D.Nishanshiya
Velanganni
for M/s.Maha Associates

For Respondents : Mr.A.Jensenan
for 1st respondent

Mr.R.Govindasamy
Spl. Government Pleader
for respondents 2 and 3

ORDER

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the first respondent to submit pension and terminal benefit proposals of the petitioner to the second respondent and to direct the second respondent to settle the pension cum retiral benefits with interest to the petitioner.

सत्यमेव जयते

2. The case of the petitioner is that having served for 32 years in the first respondent school as P.G. Assistant, he retired from service on 30.4.2012, on attaining the age of superannuation. While he was in service, the first respondent placed him under suspension for three months on 9.12.2009 in pursuance of the complaints alleged to be made by students and

parents. An enquiry was ordered to be conducted. Despite request made by the petitioner to serve a copy of the complaint, the first respondent had not furnished the same. Meanwhile, on expiry of three months, the petitioner rejoined the duty on 9.3.2010.

3. According to the petitioner, Section 22(3) of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 (hereinafter referred to as "the said Act"), empowers the respondent authorities to place the petitioner under suspension only for two months. But, contrary to the provisions of the said Act, the first respondent placed the petitioner under suspension for three months.

4. Since the petitioner was due to retire on 30.4.2012, he requested the first respondent to regularise the suspension period and submit pension proposals for early action. On 29.12.2011, the first respondent replied that suspension period could be regularised only on receipt of the order from the second respondent. Thereafter, on 30.4.2012, the petitioner was permitted to retire from service.

5. On 18.7.2012, the petitioner made a representation to the second respondent about non-sending of pension proposals by the first respondent. On receipt of the representation, the second respondent directed the first respondent vide letter dated 21.8.2012 to submit pension proposals within seven days, failing which the first respondent alone was responsible.

6. The grievance of the petitioner is that the first respondent has no power to suspend the petitioner beyond two months and therefore, the disciplinary action became null and void. On knowing the error in decision, the first respondent came forward to pay full salary for the suspension period and the petitioner has also received Rs.80,443/- on 30.10.2012 for the suspension period.

7. Having regularised the suspension period, the first respondent has withheld the pension proposals without any reason. In the affidavit filed in support of the writ petition, it is averred that the first respondent is deliberately delaying the submission of pension proposals to the competent authorities.

Even eight months after the retirement, the first respondent has not taken sincere efforts to send pension proposals. Hence, the petitioner has filed the writ petition seeking direction on the first respondent to submit pension proposals to the second respondent and in turn direct the second respondent to settle the pension cum retiral benefits to the petitioner.

8. Refuting the averments in the writ petition, the first respondent filed counter stating that the writ petition has become infructuous as the pension papers of the petitioner were sent to the department on 29.1.2013 itself, pursuant to which the Accountant General sanctioned the pension and other terminal benefits on 19.3.2013. According to the first respondent, there was no delay in processing the pension papers. On the other hand, the petitioner did not cooperate and failed to hand over copies of photographs and in fact, he had given photographs only on 19.6.2012. Thereafter, pension papers were prepared and handed over to the petitioner on 19.11.2012 for his signature. The petitioner has returned the papers after putting his signatures only on 29.1.2013, on which date itself, the proposal was forwarded by the first respondent to the department. By an

order dated 18.3.2013, the pension and retiral benefits were sanctioned by the competent authority.

9. The second respondent has filed a counter affidavit stating that the first respondent has failed to act precisely and dragged the proceedings to regulate the suspension period for 2½ years. After realising the fault of not conducting proper enquiry and awarding any punishment to the petitioner for a period of 2½ years from the date of suspension, the School Committee of the first respondent decided to regulate the suspension period. Since the pension proposal was not sent in time, a warning letter dated 13.7.2012 was issued to the first respondent. The second respondent also addressed second warning letter to the first respondent highlighting that since the petitioner was properly relieved from his service on the date of his superannuation on 30.4.2012, pension proposal should be sent at the earliest and if not, departmental action will be taken against the first respondent.

10. On 21.8.2012, the first respondent was given warning by the second respondent that if the first respondent did

not comply with the Resolution of the School Committee dated 18.4.2012, direct payment will be imposed and steps will be taken for appointment of Special Officer to administer the school. Thereafter, the first respondent has come forward to regulate the service of the petitioner by paying Rs.80,443/- for the suspension period.

11. According the second respondent, terminal benefits viz., Special Provident Fund, Encashment of Earned Leave and Unearned Leave, Aided School Teachers Provident Fund and D.C.R.G., were sanctioned and paid to the petitioner. The second respondent department was waiting to take a call on the erring Management after the finalisation of the writ petition.

12. I heard M/s.D.Nishanshiya Velanganni for M/s.Maha Associates, learned counsel appearing for the petitioner and Mr.A.Jenasenan, learned counsel appearing for the first respondent and also Mr.R.Govindasamy, learned Special Government Pleader appearing for respondents 2 and 3. Perused the materials available on record.

13. The learned counsel for the petitioner submitted that the inaction on the part of the first respondent in not submitting proposal in respect of the pension and other retiral benefits to the second respondent in time caused much loss to the petitioner, apart from mental agony. He submitted that despite specific warning given by the second respondent, the first respondent has deliberately delayed in submitting the pension proposals to the Accountant General.

14. The learned counsel argued that the first respondent continued to be lethargic, negligent and vindictive by not submitting the pension and other retiral benefits to the competent authority.

15. Finally, he argued that only after filing of the writ petition, the retiral benefits were sanctioned and paid to the petitioner. However, the learned counsel argued that the petitioner is entitled to claim interest for the belated payment of pension and other terminal benefits.

16. Per contra, the learned counsel appearing for the

first respondent submitted that only the petitioner has delayed in returning the pension papers handed over to him for signature and there is no delay on the part of the first respondent.

17. He argued that as soon as the petitioner retired on 30.4.2012, the process was initiated for preparation of his pension and other papers which usually takes a few months to complete and since the petitioner did not co-operate by handing over photographs, the delay had occurred and the first respondent has not deliberately delayed in sending the pension proposals to the competent authority.

18. The learned Special Government Pleader appearing for respondents 2 and 3 submitted that only after the second respondent intervened, the first respondent regulated the suspension period. He submitted that the second respondent has given a final warning to the first respondent specifically stating that if the first respondent did not comply with the School Committee's resolution dated 18.4.2012, direct payment will be imposed and steps will also be taken to recommend appointment of a Special Officer to administer the school. Pursuant to the

warning given by the second respondent only, the first respondent regulated the services of the petitioner and paid Rs.80,443/- towards salary for the suspension period.

19. The learned Special Government Pleader submitted that the second respondent has played a vital role in turning around the erring management and made them to regulate the services of the petitioner and in fact, the pension proposals were sent to the Accountant General by the second respondent on the date of receipt itself. He submitted that now all terminal benefits were sanctioned and paid to the petitioner.

20. *Prima facie*, it appears that the first respondent was lethargic in not regulating the suspension period despite the resolution of the School Committee and the advise given by the second respondent.

21. As far as failure on the part of the first respondent in regulating the suspension period despite the School Committee's resolution is concerned, the first respondent has not given any convincing reason. On a perusal of the typed of set of papers, I

find that, on 18.4.2012 itself, the School Committee passed a resolution to regulate the suspended period as duty period.

22. It is seen that the second respondent wrote a letter dated 21.8.2012 warning the first respondent that if the first respondent does not comply with the School Committee's resolution dated 18.4.2012, a Special Officer will be appointed by suspending the Management. Thereafter, the first respondent regulated the suspension period and sanctioned a sum of Rs.80,443/- and paid the same to the petitioner.

23. As far as sending pension proposals and other retiral benefits is concerned, it is stated by the first respondent that immediately after the retirement on 30.4.2012, the process was initiated for preparation of pension proposals and the petitioner did not cooperate for sending proposals early.

24. In the counter of the first respondent, it has been stated that the petitioner handed over his photographs only on 19.6.2012. Thereafter, the pension papers were immediately prepared, which was collected by the petitioner only on

19.11.2012 for putting his signatures. After putting his signatures, the petitioner returned the papers to the first respondent only on 29.1.2013. According to the first respondent, on 29.1.2013 itself proposals were forwarded by the first respondent to the department. The pension and other terminal benefits of the petitioner were sanctioned by the department on 18.3.2013 and there was no delay caused on the part of the first respondent.

25. In order to prove that the first respondent has deliberately delayed sending the proposals to the competent authority, the petitioner has not produced any materials. Denying the statement of the first respondent that the petitioner had given his photographs only on 19.6.2012 and had returned the papers after putting signatures on 19.11.2012, the petitioner had not shown any materials. In the absence of any materials to rebut the statement made in the counter of the first respondent, it is to be presumed that the petitioner has also contributed for the delay in sending pension proposals in time.

26. In his counter, the second respondent stated that

pension proposals were received from the first respondent on 30.1.2013 and the same was forwarded to the Accountant General for sanction on 04.2.2013. The Accountant General has sanctioned the benefits on 18.3.2013. It is also stated that DCRG was also paid to the petitioner in April 2013. Thus, all the terminal benefits were paid to the petitioner without any pending. The petitioner has also not disputed the said fact.

27. It is settled that a pensioner cannot be allowed to suffer for the inaction of the authorities, in not performing their legal obligation in submitting the necessary papers for grant of pension to the petitioner.

28. It is also settled that any delay in settlement and disbursement of pension, gratuity etc. must be visited with penalty of payment of interest.

29. As stated supra, admittedly, in the case on hand, the petitioner has also contributed for the delay in sending the pension proposals. The only delay on the part of the first respondent is not regulating the suspension period in time

despite the School Committee's resolution. Condemning the act of the first respondent in not regulating the suspension period, the second respondent warned the first respondent stating that if the first respondent does not comply with the resolution of the School Committee, the second respondent will appoint a Special Officer to administer the school.

30. It is seen that only after the final warning given by the second respondent, the first respondent regulated the services of the petitioner. For the said delay caused by the first respondent, the second respondent stated that they are waiting to take a call on the erring management after the finalisation of the writ petition.

31. In this regard, it is pertinent to note that the salary for the suspension period was paid by the Secretary on his own, which is evident from the recitals of the letter dated 4.11.2012 addressed by the Secretary of the first respondent school to the second respondent, which reads as under:

"*nkw;fhz; bghUspy; fz;Ls;sgo vk; gs;spapy; KJfiy*

Mrphpauhf (caphpay;) gzpg[hpe;J jw;ngghJ gzpapyUe;J

30/4/2012 md;W Xa;t[bgw;Ws;s jpU/gp/mUzhr;ryk; mth;fs;
 gzpapyypUe;j fhyj;jpy; khzth;fspIk; Kiwnflhf ele;J bfhz;lJ
 cWjpg;gLj;jg;gl;lhy; (09/12/2009 Kjy; 02/03/2010 tiu) 84
 ehl;fSf;F gzpePf;fk; bra;ag;gl;lhh;/

jw;ngHJ mtUila taija[k;. gzpf;fhyj;ija[k; fUj;jpy; bfhz;L mthpd;
 84 ehl;fSf;fhd Cjpaj;ij brayh; jdpq;gl;l Kiwapy; bfhLj;J
 cjtpa[s;shh;/ bjhifia t'fp tiunthiyahf Mrphpah; 30/10/2012
 md;W bgw;Wf;bfhz;lJw;fhd Mjhuk; ,j;Jld; ,izf;fg;gl;Ls;sJ/ "

32. As stated supra, since the Secretary of the first respondent himself has settled the amount on his own, there is no need to direct the second respondent to initiate action against the school management at this belated stage.

33. As stated supra, the petitioner has also contributed for the delay in sending the pension proposals and, therefore, there is no question of awarding interest for the belated payment.

34. Having regard to the fact that the retiral benefits due to the petitioner were sanctioned and paid to him pending disposal of the writ petition, the writ petition is disposed of with a direction to the respondent authorities to ensure that the benefits, if any, due and payable to the petitioner shall be paid to him immediately without any delay and to also ensure that monthly pension is paid to the petitioner regularly. No costs.

08.06.2018

Note: Issue order copy on 14.06.2018

vs

Index : Yes

Internet : Yes

Speaking order

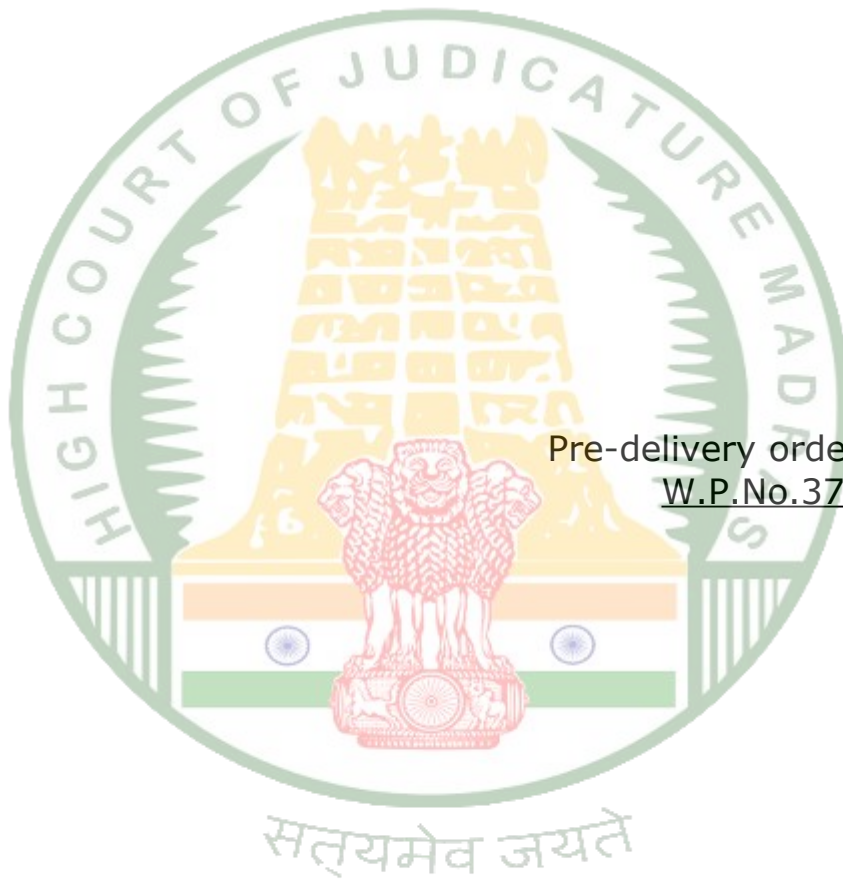
To

1. The District Educational Officer,
Coimbatore – 641 001.
2. The Secretary to Government,
Department of School Education,
Secretariat, Chennai-09.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
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