

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM :

The Hon'ble Mr.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE S.S.SUNDAR

W.A.No.141 of 2016

- 1.The Director of School Education,
Directorate of School Education,
College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
Villupuram District,
Villupuram. .. Appellants /Respondents

-vs-

M.Malarkodi ... Respondent/ petitioner

Appeal filed under Clause 15 of Letters Patent against the order dated 11.8.2014 passed in W.P.No.8914 of 2008 on the file of this Court.

For Appellants ... Mr.C.Munusamy
Spl. Government Pleader

For Respondents.. Mr.V.Ajaykumar

सत्यमेव जयते

WP.8914/08:

Filed under Article 226 of the Constitution of India issue a Writ of Certiorified Mandamus to call for the records of the 2nd respondents with No.6810/A2/2007 dt. 11.1.2008 and to quash the same and consequently to direct the respondents to count the service rendered by the petitioner from 17.9.1982 to 02.1.1997 for pensionery benefit...

JUDGMENT

(Judgment of the Court was made by Huluvadi G.Ramesh,
Acting Chief Justice)

This appeal is directed against the order of the learned Single Judge dated 11.8.2014 passed in W.P.No.8914 of 2008.

2. Heard Mr.C.Munusamy, learned Special Government Pleader appearing for the appellants and Mr.V.Ajay Kumar, learned counsel appearing for the respondents and also perused the materials available on record.

3. The respondent herein has filed the writ petition seeking to quash the order of the second appellant in Proceedings No.6810/A2/2007, dated 11.1.2008, whereby the second appellant declined to count the services put in by the respondent in Pondicherry State as there was no provision in the Tamil Nadu Pension Rules for taking into account the period of service rendered in the other State for the purpose of calculation of pension.

4. By an order dated 11.8.2014, the learned Single Judge, allowed the writ petition and quashed the order of the second appellant dated 11.1.2008 and directed the appellants to take into account the period of service rendered by the respondent in Immaculate Heart of Mary Government High School, Puducherry from 17.9.1982 to 02.1.1997 for the purpose of pensionary benefits. Assailing the same, the appellants have preferred this appeal.

5. The learned Special Government Pleader appearing for the appellants submitted that the services rendered by the respondent in the school at Puducherry, which is an institution covered under the Grant-in-aid scheme, Education Department, Puducherry, cannot be taken into account for granting pensionary benefits.

6. According to the learned Special Government Pleader the respondent was employed in a different State and the services rendered by her in Puducherry cannot be taken in terms of Rule 23 of the Tamil Nadu Pension Rules, 1978.

7. He would submit that in its letter dated 19.4.2007, the Joint Secretary and Public Information Officer (Pension) had stated that the services rendered earlier cannot be taken into account in terms of Rule 23 of the Tamil Nadu Pension Rules, 1978.

8. The learned Special Government Pleader further submitted that in view of G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009, the respondent cannot be granted benefits as claimed by her. He would also submit that since there was break-in-service, the respondent is not entitled to get the benefits as claimed by her.

9. Per contra, the learned counsel appearing for the respondent submitted that there were Government Orders qua counting of services of the employees who were working in the schools both Aided and Un-Aided in the Union Territory of Puducherry and the said services were counted for all purposes and the respondent is also entitled to get the same treatment.

10. He would submit that the services rendered by the respondent in Puducherry Aided School was a regular service and, therefore, the rule of casual service was not applicable. He would further submit that there was no break in service as the respondent got relieved from the Aided School in Puducherry on 2.1.1997 and joined the Government service on 3.1.1997.

11. The learned Single Judge, while allowing the writ petition, observed as under:

"8. It is not in dispute that the petitioner has joined the services in Immaculate Heart of Mary Govt. Girls High School, Puducherry in 1983 and her services have been confirmed in 1985. She has submitted resignation, which was accepted and she was relieved on 02.01.1997 and she joined the services in Tamil Nadu on 03.01.1997. The entire application had been forwarded through proper channel to enable her to get appointment in Tamil Nadu. That fact is also not in dispute. When the resignation is for the purpose of seeking another appointment, whether temporary or permanent, the past services cannot be forfeited. If such a narrow interpretation is given to Rule 23, more particularly to proviso to Rule 23(1), the benefits to teachers like the petitioner, will not be extended at all. Denying the past services to the petitioner by quoting Rule 23(1) ignoring the proviso to the said Rule, is not correct as the petitioner has fulfilled the conditions prescribed in the proviso to Rule 23(1). That apart, the petitioner has also given two examples of two persons, who have been transferred from Pondicherry to Tindivanam and in another case

Pondicherry to Salem, wherein the past services of the persons have been taken into account by the Government for the purpose of the benefits.

9. In this case, the petitioner has sought for a limited prayer that the period of services rendered by her in Immaculate Heart of Mary Govt. Girls High School, Puducherry, should be taken into account only for the purpose of pensionary benefits. Hence I find much force in the contention of the learned counsel for the petitioner."

12. During the course of arguments, when this Court asked the learned counsel appearing for the respondent to show which Government Order and/or Circular supports the case of the respondent that the services rendered by her in Puducherry would be taken into account for the purpose of pensionary benefits, nothing has been produced before this Court to substantiate the case of the respondent.

13. Though, in the order impugned, the learned Single Judge observed that there were examples in the past to the effect that services of persons, who have been transferred from Puducherry to Tindivanam and Puducherry to Salem, have been taken into account by the Tamil Nadu Government for the purpose of the pensionary benefits, nothing has been produced before this Court.

14. According to the appellants, the period will be taken into account if the respondent was to join in some other institution, if the application was routed through proper channel and with prior permission. Though, the learned Single Judge observed that the entire application had been forwarded through proper channel to enable the respondent to get appointment in Tamil Nadu and the said fact was also not in dispute, there is no material to show that the respondent applied the B.T. Assistant post in Tamil Nadu through proper channel and that too with the prior permission of Immaculate Heart of Mary Government Girls High School, Puducherry and other authorities of the Puducherry. The affidavit in support of the writ petition is silent on this aspect.

15. Considering the services rendered by the respondent in Puducherry for nearly 15 years and in order to give an opportunity to the respondent to substantiate her case and also to give quietus to the issue, more particularly, taking note of the fact that setting aside the order of the learned Single Judge would lead to multiplicity of proceedings, this Court is of the view

that the order passed by the learned Single Judge needs modification.

16. Accordingly, the order of the learned Single Judge is modified by directing the petitioner to submit a detailed representation to the appellant authorities by enclosing the supporting materials, including Government Orders and/or Circulars, if any, to substantiate her claim within a period of one month from the date of receipt of a copy of this order. On receipt of such representation, the appellant authorities shall consider and pass orders on the representation of the respondent on merits and in accordance with law within a period of two months thereafter.

17. The writ appeal, accordingly stands disposed of, leaving the parties to bear their own costs. Consequently, C.M.P.No.1873 of 2016 is closed.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

1.The Director of School Education,
Directorate of School Education,
College Road, Chennai - 600 006.

2.The Chief Educational Officer,
Villupuram District,
Villupuram.

+1 CC TO GOVERNMENT PLEADER SR.NO. 55011

W.A.No.141 of 2016

PVS(CO)
ASK(10/09/2018)

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