

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM

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

W.P.No.38396 of 2004
and
WP.MP.No.45938 of 2004

A.Gnanapragasam (Died)

1. A.Pappu Victoria

2. G.Amala Miriam

3. G.Arul Selvi Mariya

.. Petitioners

(Petitioners 1 to 3 substituted
as LR's of the deceased petitioner
by order dated 6.7.2017)

Vs.

1. The State of Tamil Nadu
rep. By its Secretary to Government
Educational Department
Fort St. George, Chennai - 9.

2. The Director of College Education
Directorate of Collegiate Education
Chennai - 600 006.

3. The Joint Director of Collegiate Education
Trichy Region, Trichy - 620 002.

4. The Accounts Officer
O/o. Principal Accountant General
(Accounts and Entitlements)
261, Anna Salai, Chennai - 600 018.

5. The Principal
St. Joseph's College
Trichy - 620 002.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order made in O.Mu.No.27434/F3/2004, dated 23.8.2004 passed by the second respondent, confirming the order made in O.Mu.No.7536/G2/2001, dated 19.6.2001 passed by the second respondent and quash the same and subsequently direct the respondents to sanction and pay

the pension to the petitioner with all attendant benefits, arrears and compensation for illegal termination of the petitioner from service.

For Petitioners : Mr.G.Ethirajulu

For Respondents : Mr.Digvijaya Pandian
Addl. Government Pleader
for respondents 1 to 3

Mrs.Hema Muralikrishnan
for 4th respondent

Mr.R.Parthiban
for 5th respondent

ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order made in O.Mu.No.27434/F3/2004, dated 23.08.2004 passed by the second respondent, confirming the earlier order made in O.Mu.No.7536/G2/2001, dated 19.06.2001 by the second respondent, to quash the same and to direct the respondents to sanction and pay the pension to the petitioners with all attendant benefits, arrears and compensation for illegal termination of the original petitioner from service.

2. Briefly stated, the facts are as under: The original petitioner joined duty under the fifth respondent College on 20.06.1961 as a Lecturer in Mathematics Department. He went on medical leave during the periods 20.06.1967 to 30.06.1967, 01.07.1974 to 02.10.1974 and 16.01.1975 to 16.06.1976, i.e., for almost 1½ years, pursuant to the leave granted by the fifth respondent management. The petitioner, it is alleged, was advised to undergo psychiatric treatment, as it was reported that the petitioner indulged in abnormal behaviour. It is stated that when the original petitioner was about to join duty, the fifth respondent vide letter dated 05.08.1976 intimated him that he has been terminated from service with effect from 16.06.1976. It is the case of the petitioner that his service was terminated without examining him or giving him an opportunity and/or without waiting to receive the report from the hospital that gave treatment to the original petitioner.

3. It is stated that the original petitioner made series of representations to various authorities, but the same did not evoke any response. The representation sent by the petitioner for pension through the fifth respondent to the fourth respondent was ultimately rejected by the fourth respondent by

order dated 22.01.1998 on the ground that the invalidation certificate was not annexed by the fifth respondent college while submitting the pension proposal.

4. Thereafter, the third respondent vide proceedings dated 12.04.2000 directed the fifth respondent to submit his explanation why an invalidation certificate was not annexed with the pension papers and to assign reason for the delay in sending the pension papers. In response to the same, the fifth respondent submitted an explanation dated 26.04.2000 and recommended sanction of pension to the petitioner.

5. However, it is stated that the third respondent rejected the pension proposal of the petitioner vide proceedings dated 02.01.2001, on the ground that the request for payment of pension to the petitioner was already rejected by the Government by its orders dated 06.11.2000 and 22.11.2000.

6. Thereafter, in response to the representation sent by the petitioner to the Chief Minister's Cell, the second respondent vide proceedings dated 19.06.2001, held that pension could not be paid to the petitioner as the requisite documents were not furnished by the fifth respondent College.

7. It is stated that even thereafter, the second respondent vide proceedings dated 11.04.2003 directed the fifth respondent to inform the possibility of payment of pension to the petitioner through the third respondent. Subsequently, the second respondent, vide proceedings dated 23.08.2004, rejected the request of the petitioner for payment of pension to the petitioner on the ground that the fifth respondent had not submitted invalidation certificate to the pension authority at the time of applying for pension.

8. In such backdrop, the present writ petition is filed for the relief stated supra.

9. The learned counsel appearing on behalf of the petitioners submitted that inasmuch as the original petitioner was dismissed without conducting an enquiry or affording an opportunity of hearing, the entire proceedings are vitiated.

10. He further contended that the fifth respondent having terminated the petitioner from service on medical grounds ought to have had the support of invalidation certificate so as to enable the pension authority to sanction pension to the petitioner and non production of invalidation certificate vitiates the entire order and the plea of the fifth respondent that the invalidation certificate had lost in 1977 floods cannot be countenanced.

11. He further contended that the original petitioner is entitled to pension under the provisions of the Tamil Nadu Pension Rules and denial of the same on flimsy grounds of delay and non production of invalidation certificate, for no fault of the petitioner, is arbitrary and unreasonable.

12. It is the contention of the learned Additional Government Pleader appearing on behalf of respondents 1 to 3 that the fifth respondent had not submitted the pension proposal of the original petitioner till date with the requisite documents despite repeated requests made by the respondent authorities and in the absence of proper documents, the request of the petitioner was rightly rejected by them and such orders do not warrant interference of this Court.

13. The learned counsel appearing on behalf of the fifth respondent submitted that the invalidation certificate relating to the petitioner, which is required to make claim for pensionary benefits, was destroyed in the unprecedented floods in 1977 and, therefore, the same could not be forwarded to the higher authorities.

14. I heard Mr.G.Ethirajulu, learned counsel for the petitioners, Mr.Dig Vijaya Pandian, learned Additional Government Pleader for the respondents 1 to 3, M/s.Hema Muralikrishnan, learned counsel for the 4th respondent and Mr.R.Parthiban, learned counsel for the 5th respondent and perused the documents available on record.

15. The employment of the original writ petitioner in the fifth respondent college and his termination with effect from 16.06.1976 is not in dispute.

16. Before proceeding further, it would be apposite to refer to some of the averments made in the counter affidavit filed by the fifth respondent:

"3. He was on medical leave for the periods from 20.6.1967 to 30.6.1967, 1.7.1974 to 2.10.1974 and 16.1.1975 to 16.6.1976 for approximately 1½ years. Leave was granted on medical grounds because it was noticed during the course of his functioning that he was psychiatric patient and his behaviour towards students was very cruel."

From the above averment, it is amply clear that the original petitioner was on medical leave as on 16.06.1976 and such leave was also granted by the fifth respondent College. Under such circumstances, it is not known as to how the petitioner could have been terminated retrospectively with effect from 16.06.1976, by an order dated 05.08.1976.

17. That apart, nothing has been placed on record to show that the termination of the petitioner was after affording an opportunity to him. Nothing has been stated in the counter affidavit filed by the fifth respondent rebutting the said allegation of the original petitioner. However, since the original petitioner had passed away, this Court does not propose to comment on the legality of the termination order passed by the fifth respondent at this stage.

18. The next averment in the counter affidavit of the fifth respondent which deserves reproduction is as under:

"10. The invalidation certificate was submitted by the petitioner so as to make claims for pensionary benefits. Quite unfortunately, the institution was subjected to a 'never before seen' and unprecedented floods in 1977. Several precious and crucial records of the institution were destroyed. This is true and many in the institution would still vouch safe for the colossal loss of records in the 1977 floods."

The said averment categorically proves that invalidation certificate was submitted prior to 1977, inasmuch as it is the case of the fifth respondent that the same was destroyed in the floods of 1977. However, it was due to reasons beyond the control of fifth respondent or the writ petitioner, the said documents were destroyed in the floods. The petitioner cannot be put to blame for the delay in submitting the pension proposals. As stated earlier, the petitioner had acted with due diligence and the delay was due to unforeseen reasons at the end of the fifth respondent. Moreover, it is not the case of the respondent authorities that the petitioner is not eligible for pension. The action of the respondents in not granting pension is erroneous, more so, when pension is no longer a bounty and is a right of the employee.

19. On an overall conspectus of the matter, the following order is passed:

- (i) The second respondent is directed to call for all particulars in the prescribed format from the 5th respondent Management once again regarding sanction of pension and other terminal benefits to the petitioner within two (2) weeks from the date of receipt of copy of this order;
- (ii) The fifth respondent is directed to furnish all the details in the required formats to the second respondent within a period of one week from the date of receipt of communication from second respondent along with an affidavit, duly notarized, stating that the original invalidation certificate and other missing

- records, if any, were destroyed in the floods.
- (iii) On receipt of such particulars and affidavit from the fifth respondent, the second respondent shall not insist on the invalidation certificate and process the pension proposals based on all other documents, as a special case, in the light of the affidavit to be filed by the fifth respondent.
- (iv) The authorised representative of the legal heirs of the petitioner is directed to meet the fifth respondent for signing all the necessary documents in this regard.
- (v) The second respondent is directed to sanction all benefits, including pension payable to the petitioner, within a period of four weeks from the date of receipt of pension proposals from the fifth respondent with interest.

This writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

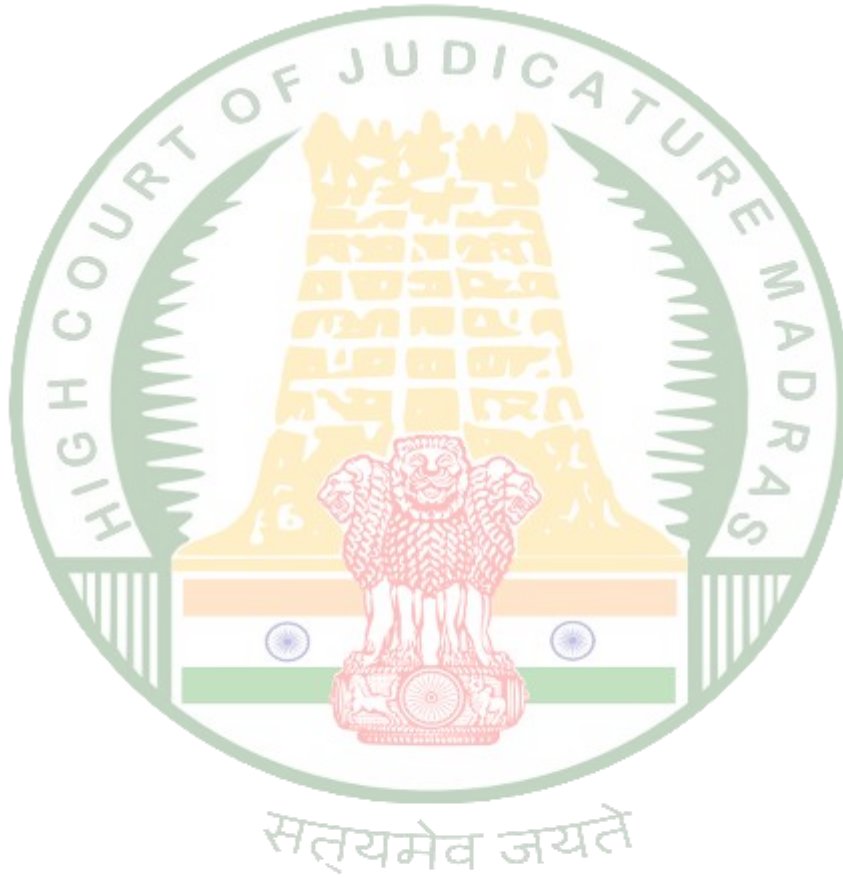
To

1. The Secretary to Government,
State of Tamil Nadu,
Education Department,
Fort St. George, Chennai - 9.
2. The Director of College Education,
Directorate of Collegiate Education,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Trichy Region, Trichy - 620 002.
4. The Accounts Officer,
O/o. Principal Accountant General,
(Accounts and Entitlements),
261, Anna Salai, Chennai - 600 018.

+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.60710
+1cc to Mrs.Hemamuralikrishnan, Advocate, S.R.No.60680
+1cc to Mr,R.Parthiban, Advocate, S.R.No.60492

W.P.No.38396 of 2004
and
WP.MP.No.45938 of 2004

rrs 14/09/2018



WEB COPY