IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

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

W.P.No.18730 of 2004

B.Sulachana .. Petitioner

Vs.

1. The Government of Tamilnadu,
   rep. by Secretary to the Government,
   School Education Department,
   Fort St. George,
   Chennai - 9.

2. The Director of Elementary Education,
   College Road, Chennai - 6.

3. The District Elementary Educational Officer,
   Coimbatore District, Coimbatore.

4. The Assistant Elementary Educational Officer,
   Sarkarsamakulam, Coimbatore District.

5. The Accountant General,
   Teynampet, Chennai - 18. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to G.O.Ms.No.96, School Education (B2) Department, dated 02.07.2002 and the proceedings of the fifth respondent issued in No.AG (A&E)/PENSION/24/1/S91-S14/Retd/177 dated 05.09.2003 and quash the same and issue a consequential direction to the respondents to grant pension from 01.07.1997 onwards and to grant the arrears of pension and to grant other pensionary benefits to the petitioner such as Computation of Pension, Gratuity, Encashment of Earned Leave, Family Benefit Fund with interest at the rate of 18% per annum and to grant arrears of salary for the period of re-employment from 01.07.1997 to 31.05.1998.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mrs.M.E.Raniselvam
Additional Government Pleader
(for R1,R2,R3 & R4)

Mr.T.Ravikumar (for R5)

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records pertaining to G.O.Ms.No.96, dated 02.07.2002 and the proceedings of the first respondent in No.AG(A&E)/PENSION/24/1/S91-S14/Retd./177, dated 05.09.2003, and to quash the same and consequently, direct the respondents to grant the arrears of pension and to grant other pensionary benefits to the petitioner such as Computation of Pension, Gratuity, Encashment of Earned Leave, Family Benefit Fund with interest at the rate of 18% per annum and to grant arrears of salary for the period of re-employment from 01.07.1997 to 31.05.1998.

2. The case of the petitioner is that she was a retired Secondary Grade Teacher and was appointed as Hindi Pandit on 01.06.1966 at Sri K.Rangaswami Naidu Girls High School Periyanaickenpalayam, Coimbatore District and had worked till 31.03.1969. The Government of Tamil Nadu took a policy decision to introduce two language education system in Tamil and English in the place of three language education system viz., Tamil, English and Hindi, from the academic year 1967-1968 and had decided to re-employ the Hindi Pandits in an appropriate post.

3. According to the petitioner, she was relieved from the post of Hindi Pandit with effect from 31.03.1969 and by order of the Inspector of Girls School, Coimbatore Circle dated 31.03.1969, the petitioner was allotted to St.Joseph Higher Elementary School, Sowriyarpalayam, Coimbatore in the supernumerary post, which will not exist beyond 31.03.1969 and to join in the post on 31.03.1969. Pursuant to the said order of allotment, the petitioner was discharging her duty as Secondary Grade Teacher and had been paid salary. The Provident Fund deduction has been made from her salary and she was also awarded Selection Grade and Special Grade scales of pay in the post of Secondary Grade Teacher.

4. According to the petitioner, when she was due to retire in the month of June, 1997 on attaining the age of superannuation, as per the Government Orders, she was re-employed from 01.07.1997 to 31.05.1998 and worked as Secondary Grade Teacher.

5. It is alleged that the Accountant General returned the pension proposals on the ground that the petitioner's appointment as Secondary Grade Teacher was not in order as she had not undergone any service training and also re-fixation of pay has not been countersigned by the Inspector of Girls Schools. After the rejection of the pension proposal by the Accountant General, the District Elementary Education Officer recommended the case of the petitioner to the Director of Elementary Education for obtaining relaxation order.

6. According to the petitioner, on 02.07.1992, the Government issued G.O.Ms.No.96 granting exemption to the petitioner and ordered that pension will be paid from the date of the G.O. G.O.Ms.No.96, dated 02.07.2002 was silent regarding other pensionary benefits.

7. On 11.10.2003, the petitioner sent a representation to the Government to grant other pensionary benefits. Despite receipt of the same, the Government has not passed any orders and the benefits for 28 years of service had not been granted to her.

8. The third respondent has filed counter admitting the averments in the affidavit filed in support of the writ petition regarding appointment of the petitioner; working of the petitioner as Secondary Grade Teacher; awarding of Selection Grade and Special Grade scales of pay and also relaxation given by the Government vide G.O.Ms.No.96 with effect from 02.07.2002. It is stated in the counter that the petitioner has not approached the third respondent on 11.10.1993 to claim pensionary benefits and other monetary benefits. It is also stated in the counter that the writ petition has no basis to grant relief claimed from 01.07.1997 to 31.05.1998.

9. The fifth respondent filed counter stating that considering the fact that training was not provided to the petitioner, as a special case, the first respondent relaxed the conditions laid down in G.O.Ms.No.477, dated 06.04.1968 and ordered pension with effect from the date of issuance of the G.O.Ms.No.96, dated 02.07.2002. It is stated that fresh proposals were received in August 2003 and pension of Rs.3,450/- per month with effect from 02.07.2002 was authorised in favour of the petitioner in September 2003.

10. It is also stated that the case of the petitioner was reviewed by the fifth respondent and though the Government had ordered for pension from 02.07.2002, she was entitled to gratuity and commuted value of pension. Therefore, authorisation of gratuity of Rs.1,06,950/- and commuted value of

pension of Rs.1,21,716/- were also authorised in favour of the petitioner by an order dated 13.02.2007 furnishing a copy to the petitioner. Insofar as the eligible leave encashment and family benefit fund are concerned, the same have to be drawn and disbursed to the petitioner the respondents 3 and 4, if not already paid. It is stated that any further revision of pensionary benefits with effect from 01.07.1997, has to be considered by the first respondent.

11. I heard Mr.R.Saseetharan, learned counsel appearing for the petitioner, Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 to 4 and also Mr.T.Ravikumar, learned counsel appearing for the fifth respondent. Perused the materials available on record.

12. The learned counsel for the petitioner submitted that the respondent authorities treated the petitioner as Secondary Grade Teacher for all purposes and the work had been extracted from her as Secondary Grade Teacher and she had also been paid for the post of Secondary Grade Teacher. He submitted that Selection Grade and Special Grade scales of pay had been granted to the petitioner in the post of Secondary Grade Teacher. At the time of retirement only the fifth respondent raised an objection that the petitioner had not been sent for short term training and, therefore, exemption is necessary.

13. The learned Additional Government Pleader appearing for respondents 1 to 4 submitted that the impugned G.O. has been passed based on G.O.Ms.No.477, dated 06.04.1968 and monthly pension granted to the petitioner from 02.07.2002 was as per law and, therefore, the impugned order need not be quashed.

14. The learned counsel appearing for the fifth respondent submitted that though the impugned G.O. stipulates pension to be paid from 02.07.2002, subsequently, the case of the petitioner was reviewed by the fifth respondent and given authorisation of gratuity and commuted value of pension and the same was intimated to the petitioner. He also submitted that it is for respondents 3 and 4 to draw and disburse leave encashment and family benefit fund. He argued that it is for the first respondent to consider the claim of the petitioner.

15. It appears that the petitioner joined as Secondary Grade Teacher in St. Joseph Higher Elementary School, Sowriyarpalayam, Coimbatore District, which was a private aided school receiving teaching grant from the Government of Tamil Nadu and had been paid salary for the post of Secondary Grade Teacher. The Provident Fund deduction has also been made from the salary of the petition. The petitioner was also awarded Selection Grade and Special Grade scales of pay and thus, it is

amply clear that the Education department accepted the service of the petitioner as Secondary Grade Teacher.

16. It also appears that petitioner was to retire on 30.06.1997. As per the Government Orders, the teachers working in the schools, who retire in the middle of the academic year, will be employed till the end of the academic year to ensure the continuity of education and teaching to the students. As such the petitioner was re-employed and was working from 01.07.1997 to 31.05.1998. There is no dispute qua retirement and re-employment of the petitioner.

17. The grievance of the petitioner is that she had served for 28 years and work had been extracted from her as Secondary Grade Teacher and, therefore, the respondent authorities have no right to withhold the other pensionary benefits on the ground that the petitioner did not undergo short term training.

18. Though initially the fifth respondent granted pension and refused to grant other pensionary benefits on the ground that the impugned G.O. was silent, in their counter, they have stated that authorisation was given to draw gratuity of Rs.1,06,950/- and commuted value of pension of Rs.1,21,716/-. The same has not been denied by the petitioner. Thus, subsequent to the filing of the writ petition, the petitioner was paid gratuity and commuted value of pension.

19. The points that arise for consideration are (i) whether the first respondent was right in granting pension from 02.07.2002 i.e., the date of issuance of G.O.Ms.No.96; (ii) whether the petitioner is entitled to get the other pensionary benefits which were not paid so far; and (iii) whether the petitioner is entitled to get salary for the re-employment period.

20. By the impugned G.O., the Government has given exemption to the petitioner from undergoing the short term training as provided under G.O.Ms.No.477, dated 06.04.1969. There is no fault on the petitioner in not undergoing the training at the relevant point of time. The failure to give training is only on the part of the Government. The first respondent ought to have considered the service rendered by the petitioner and considered the claim made by her.

21. As stated supra, it is not in dispute that after attaining the age of superannuation, she was re-employed from 01.07.1997. It is also beyond any cavil that at the time of retirement the petitioner had completed 28 years of service. Therefore, obviously, she is entitled to retiral benefits in

accordance with law.

22. It is seen from the records that the petitioner claimed retirement benefits in the year 1997 itself and the impugned Government Order was passed only in the year 2002. Delay of five years occurred in giving exemption to the petitioner, for which no proper explanation is forthcoming from the side of the first respondent. The delay caused cannot be put against the petitioner. Therefore, the first respondent ought to have given effect of the impugned Government Order retrospectively.

23. The learned counsel for the petitioner submitted that along with the petitioner one Hindi Pandit viz., S.Jeevarathinam had been allotted to P.G.S. Basic School, Peelamedu, and she had been granted all pensionary benefits by the Accountant General though she did not undergo the short term training, whereas in the case of the petitioner herein, the respondents adopted a different yardstick. Admittedly, the said contention of the petitioner has not been rebutted by the respondents. Therefore, when similarly placed Hindi Pandit had been granted all pensionary benefits by the Accountant General, the same yardstick has to be followed in the case of the petitioner also.

24. The fifth respondent though by the impugned proceedings granted pension and rejected the other pensionary benefits on the ground that G.O.Ms.No.96, dated 02.07.2002 was silent, pending writ petition, they revisited the case of the petitioner and disbursed the gratuity and commuted value of pension and the same have been accepted by the petitioner.

25. When the subsequent development stood thus, respondents 1 to 4 ought to have considered the claim of the petitioner in so far as drawal and disbursement of leave encashment and family benefit fund, if not already paid.

26. Qua grant of pension with effect from 02.07.2002 by the first respondent, as stated supra, the first respondent cannot impute delay to the petitioner and when the fifth respondent already gave authorisation for claiming gratuity and commuted value of pension, the first respondent ought to have granted pension to the petitioner from 01.07.1997 onwards.

27. Since the delay in granting pension from 01.07.1997 and also granting other pensionary benefits to the petitioner were on the part of the respondent authorities, they should, in my considered opinion, be liable to pay interest on the belated payment.

28. In Dr. Uma Agarwal vs. State of U.P. and another, reported in (1999) 3 SCC 438, the Hon'ble Supreme Court held that “when there is delay in disbursement of the pensionary benefits, the department is liable to pay interest thereof”. In Paragraphs No.5 to 7, it was held as follows:-

> "5. If rules/instructions which prescribe time schedule for settling of retirement dues, are followed strictly, much of litigation can be avoided and retired government servants would not feel harassed. Pension is not a bounty but right of a government servant. Government is obliged to follow rules. Delay in settling retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too, there is a prescribed procedure. This indeed is unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind time schedule prescribed in the rules/instructions, apart from other relevant factors applicable to a case.
>
> 6. The present case is a clear example of inexcusable department delay. Respondents contend that letters were sent to the petitioner after her retirement seeking some information for settling her retirement dues but this is denied by the petitioner. Even if it is assumed that such letters were sent, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after petitioner's retirement.
>
> 7. This is a fit case for awarding interest to the petitioner. It is however not necessary that the matter should go back to the Government for computation of interest. Instead, on the facts of this case, interest is quantified at Rs.1 lakh. The same shall be paid to the petitioner within two months."

29. Rule 45-A of the Tamil Nadu Pension Rules as amended from 20th February 1995 also provides for granting interest at the rate of 12% per annum, if the terminal benefits are delayed.

30. In State of Kerala and others v. V. Padmanabhan Nair, reported in (1985) 1 SCC 429, the Hon'ble Supreme Court held that "prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the Government servant". It was further held that "gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month". In that case, the Hon'ble Supreme Court, finding that there was delay in disbursement of the terminal benefits, directed the respondents therein to disburse the pensionary benefits with interest at the rate of 6% per annum.

31. The aforesaid judgment of the Hon'ble Supreme Court squarely applies to the case on hand. Therefore, this Court is of the firm view that the petitioner is entitled to interest for the belated disbursement of the terminal benefits at the rate of 6% per annum.

32. Coming to the prayer of the petitioner that he was not paid salary from 01.07.1997 to 31.05.1998, the respondent authorities have not disputed the same. Since the petitioner had worked for the period from 01.07.1997 to 31.05.1998, she is entitled to get salary for the aforesaid period. Denial of salary to the petitioner from 01.07.1997 to 31.05.1998 is highly contrary to the rules. Therefore, I am of the view that the petitioner is entitled to get salary for the re-employment period from 01.07.1997 to 31.05.1998.

33. In the result:

(a) the writ petition is allowed and the impugned Government Order passed by the first respondent dated 02.07.2002 insofar as granting pension from 02.07.2002 and the impugned Proceedings of the fifth respondent dated 05.09.2003 are quashed;

(b) the respondent authorities are directed to grant pension from 01.07.1997 onwards and pay arrears of pension and also grant other pensionary benefits to the petitioner which were not paid so far with interest at the rate of 6% per annum;

(c) the respondents are directed to pay arrears of salary for the re-employment period i.e., from 01.07.1997 to 31.05.1998;

(d) the aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Secretary to the Government,
   School Education Department,
   Fort St. George,
   Chennai - 9.

2. The Director of Elementary Education,
   College Road, Chennai - 6.

3. The District Elementary Educational Officer,
   Coimbatore District, Coimbatore.

4. The Assistant Elementary Educational Officer,
   Sarkarsamakulam, Coimbatore District.

5. The Accountant General,
   Teynampet, Chennai - 18.

Pre-delivery order made in
W.P.No.18730 of 2004

TR(25/06/2018)