



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A (MD)No.370 of 2015

and

M.P. (MD) No.1 of 2015

I.Rani

... Appellant/Petitioner

vs.

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

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

3. The District Elementary Education Officer,
Thanjavur District, Thanjavur.

4. The Assistant Elementary Education Officer,
Thanjavur Town, Thanjavur District.

5. The Principal Accountant General,
Office of the Accounts and Entitlements,
Accounts General Office,
Mount Road, Chennai.

... Respondents/Respondents

Prayer : Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order dated 23.02.2015 made in WP(MD)No.14026 of 2012 on the file of this Court.

Prayer in WP(MD). 14026/ 2012 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of CERTIORARIFIED MANDAMUS calling for the records relating to the impugned order passed by the 1st respondent in his proceedings No.31731/S2/2012 dated 27.11.2012 and quash the same and consequently direct the respondents herein to pay the retirement benefits viz., Gratuity, Pension, Provident Fund Salary Arrears and all other amounts payable by the respondents to the petitioner forthwith for the services rendered by the petitioner from 20.07.1988 till 02.03.2012 together with 18 per cent interest per annum. (Prayer amended as per Order of this Court dated 23/2/2015 in MP.1/15 in WP.No.14026 of 2012)

For Appellant

: Mr.C.Jeganathan



For Respondents : Mrs.S.Srimathy,
Special Government Pleader
for R1 to R4

Mr.P.Gunasekaran for R5

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JUDGMENT

**(Judgment of the Court was delivered by
G.R.SWAMINATHAN, J.)**

Heard the learned counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent.

2.This intra court appeal is directed against the order dated 23.02.2015 made in WP(MD)No.14026 of 2012 filed by the appellant herein. The appellant was appointed as a Secondary Grade Teacher on 25.02.1987. The appellant had certain serious health issues. She had to avail leave on and off. She therefore applied for voluntary retirement. The District Elementary Educational Officer, Thanjavur by order dated 29.02.2012 permitted her to go on voluntary retirement. However, the appellant was not disbursed with any pensionary benefits. She therefore filed a writ petition for disbursement of her retirement benefits. It was then realized by the authorities that the appellant had not put in 20 years of service or completed 50 years of age. Thereafter, the Secretary to Government, School Education Department passed an order dated 27.11.2012 informing the appellant that the proposal submitted by the other authorities stood rejected. In other words, the order passed by the third respondent permitting the appellant to go on voluntary retirement was not ratified by the first respondent.

3.In these circumstances, the appellant filed WP(MD)No.14026 of 2012. In the said writ petition, the learned Single Judge sustained the order passed by the first respondent, but however, directed the respondents to give posting order to the appellant and permit her to join duty. When the writ petition was disposed of on the said lines, the submission made by the counsel for the appellant/writ petitioner was recorded as follows :

"15.The learned counsel for the petitioner submitted that the petitioner may be granted continuity of service from the date of relieving the petitioner on voluntary retirement till posting order and permitting the petitioner to join duty. The learned counsel for the petitioner also submitted that the petitioner is willing to give up all the monetary benefits for this period.

16.In view of this submission, the petitioner is directed to give a representation to the respondents to this effect. The respondents are directed to consider the same sympathetically."



The order dated 23.02.2015 disposing of her writ petition is under challenge at the instance of the writ petitioner herself. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds.

4. We are not inclined to agree. As rightly observed by the learned Single Judge, as per the Service Rules, a Government employee is entitled to go on voluntary retirement if he or she had completed 50 years of age or put in 20 years of service. Neither of the conditions stand fulfilled in this case. It is true that the third respondent had passed an erroneous order in favour of the writ petitioner in the first instance. The appellant cannot take advantage of the said error. An order by any Governmental authority will have to be in consonance with the rules. If it is contrary to the rules, it can always be set right later. That is exactly what has been done by the first respondent in this case.

5. The learned Single Judge was right in sustaining the order passed by the first respondent. In fact, the learned Single has shown indulgence and sympathy by permitting the appellant to join duty. We find no merit in this writ appeal. The same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Principal Secretary to the Government,
School Education Department,
Fort St. George, Chennai.
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Education Officer,
Thanjavur District, Thanjavur.
4. The Assistant Elementary Education Officer,
Thanjavur Town, Thanjavur District.

+1cc to M/s.Veera Associates, Advocate Sr.No.96102

SKM

KM/BK/SAR1/18.12.2018/3P/6C

W.A (MD) No.370 of 2015

and

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15.11.2018