



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM****W.P(MD)No.8661 of 2011**

S.Syed Burhan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary
Department of School Education,
Fort.St.George, Chennai.
2. The Director of School Education,
DPI Campus, Chennai.
3. The Chief Educational Officer, Thoothukudi.
4. The District Educational Officer, Thoothukudi.
5. The Correspondent,
Central Higher Secondary School,
Kayalpattinam,
Tuticorin District.
6. The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Malaigai,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in Na.ka.Enn.16955/W5/E2/11 dated 21.06.2011 and quash the same and consequently direct the respondents 1 and 2 to take into account the petitioner's service between 18.09.1989 and 20.06.1996 in the 5th respondent school for the purpose of pay fixation, pension and other attendant benefits.

For Petitioner

: Mr.R.Subramanian

For Respondents 1 to 4

: Mrs.VPM.Vaishnavi,
Government Advocate.

For Respondent 5

: Mr.Xavier Rajini

For Respondent 6

: No appearance

**ORDER**

The order of rejection dated 21.06.2011 in relation to the claim of the writ petitioner for calculating the period of service rendered by him in private aided school for the purpose of reckoning the qualifying service for pensionary benefits under the Tamil Nadu Pension Rules.

2. The learned Counsel appearing on behalf of the writ petitioner states that even 50% of the services of the writ petitioner ought to have been taken into account, for the purpose of reckoning the period of qualifying service under the amended Rule 11 of the Tamil Nadu Pension Rules.

3. This Court is of an opinion that no doubt that the Government has granted some concession in the amended Rule 11 of the Tamil Nadu Pension Rules, 1978. As per the Rule, 50% of the temporary services rendered in Government establishments shall be taken into account for the purpose of reckoning qualifying services. However, the employees, who seek the benefit of amended Rule 11, should have rendered service in any Government establishment or as Government employee on temporary basis. Admittedly, in the present writ petition, the writ petitioner had service in Private Aided School and during the relevant point of time, the petitioner was receiving the management salary and the appointment was not approved by the competent educational authorities. Such services rendered in the private aided school ought to be treated as private service and the same cannot be considered as services with Government or with the State. Thus, the application of Tamil Nadu Pension Rules, 1978 does not arise at all.

4. The learned Counsel for the petitioner states that the Government passed an order adopting all the Government Rules in respect of the Teachers appointed in the private aided schools. No doubt the Government passed an order extending the benefit to all the Government servants and all the Teachers of the private schools. However, such benefits are to be granted from date of the grant of approval of appointment by the competent educational authorities and not from the date on which, the Teacher was appointed by the management. It is time and again clarified by the Courts as well as the educational authorities that the Government benefits would be granted only with effect from the date of approval of the appointment granted by the competent educational authorities. Thus, the proposition mooted out in this regard by the learned Counsel for the petitioner is not in dispute. However, the only point to be clarified is that the benefit is to be extended from the date of approval of the appointment by the

<https://hccourtsonline.gov.in/hccservices/>

5. The pension rules are to be applied only in respect of the



Government Servants or to the services to the post in connection with the affairs of the State. This being the rule, the appointment initially made by the management is to be construed as private appointment and the same cannot be defined as the appointment made by the State. Soon after the appointment is approved by the competent authority the teacher becomes Government employee, for the purpose of availing service benefits, including the pension and other terminal benefits.

6. Such being the principles to be followed, this Court is of an opinion that services rendered as employee of the management, the services cannot be taken into consideration for the purpose of reckoning the qualifying services in order to settle the terminal and pensionary benefits. It is made clear that the pension and terminal benefits, ought to be settled with effect from the date of grant of approval of appointment by the competent authorities of the department. Thus, the writ petitioner has not made out any ground for the purpose of granting the relief as such sought for in this writ petition.

7. In the result, writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Education,
(High School and Higher Secondary School),
Fort.St.George, Chennai.
2. The Director of School Education,
DPI Campus,
Chennai.
3. The Chief Educational Officer,
Thoothukudi.
4. The District Educational Officer,
Thoothukudi.

<https://hcservices.courtsofmadras.org/>
5. The Court Correspondent,
Central Higher Secondary School,
Kayalpattinam, Tuticorin District.



6. The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Malaigai,
Madurai.

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+ 1 cc TO Mr.R.Subrmanian , Advocate in SR No. 56330
+ 1 cc TO The Special Government Pleader in SR No. 56530

dsk

AE/SV MMS/SAR1/15.05.2018/4P/9C

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