

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.04.2019

Delivered on : 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.6136 and 6137 of 2006
and
WPMP.Nos.6622 and 6623 of 2006

Management of St. Joseph of
Cluny Montessori School, Rep.by its Headmistress,
Sr.Phyllis, Cluny Convent,
Airport Road,
Lalpet,Pondicherry-605008. ... Petitioner
(in both Writ Petitions)

Vs.

- 1.The Director of School Education,
Government of Pondicherry.
... 1st Respondent in both Writ Petition
- 2.Tmt.Zena Noronho
.... 2nd Respondent in WP.No.6136 of 2006
- 3.Miss.AnnammaKuriakose ... 2nd Respondent in WP.NO.6137/2006

PRAYER IN W.P.NO.6136 OF 2006: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to Order in Education Appeal No.1 of 2005 dated 23.01.2006 passed by the First Respondent and quash the same.

PRAYER IN W.P.NO.6137 OF 2006: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to Order in Education Appeal No.2 of 2005 dated 23.01.2006 passed by the First Respondent and quash the same.

For Petitioner : Mr.T.V.Sai Srujan
for M/s.P.V.S.Giridhas Associates
(in both Writ Petitions)

For Respondents : Mr.R.Syed Mustafa, Spl.G.P.
Pondicherry for R-1.

M/s.Sai & Bharath for R-2
(in both Writ Petitions)

C O M M O N O R D E R

These Writ Petitions are filed for Writs of Certiorari to quash the separate Orders dated 23.01.2006 of the First Respondent in Education Appeal Nos.1 and 2 of 2005, respectively, in W.P. Nos.6136 and 6137 of 2006.

2.The brief facts in each of the Writ Petitions are as follows:

The facts that are common to both Writ Petitions are: the Petitioner is a Christian un-aided minority educational institution, which was set up in the year 1946. The School does not receive Government aid and was established by the Cluny Convent.

3.Facts specific to W.P. No.6136 of 2006: The Second Respondent worked as an untrained teacher in the School from 1974 and, thereafter, as a trained teacher from 1980. She submitted a letter of resignation on 10.03.2005, which was duly accepted by the Petitioner, and she was relieved of her duties with effect from 31.05.2005. According to the Petitioner, the Second Respondent requested for voluntary retirement by letter dated 10.03.2005 but the rules of the School do not envisage voluntary retirement. Therefore, the School treated it as a resignation. The Petitioner's case is that employees who leave the services of the school prematurely are not entitled to pension and other retirement benefits whereas, according to the Second Respondent, she is entitled to both pension and gratuity. The request of the Second Respondent for payment of pension and gratuity was rejected by reply dated 13.06.2005 to notice dated 01.06.2005. In these facts and circumstances, the Second Respondent filed an Appeal before the First Respondent under Section 21(1) (b) of the Pondicherry School Education Act, 1987.

4.Facts specific to W.P. No.6137 of 2006: the Second Respondent herein worked in the School as a Teacher from 01.07.1969 onwards and submitted a letter of resignation on

22.12.2004, which was duly accepted by the Petitioner, and she was relieved of her duties with effect from 31.05.2005. The Second Respondent issued notice dated 01.06.2005 seeking payment of pension and gratuity and the Petitioner sent a reply dated 13.06.2005 refuting the said claim. Therefore, the Second Respondent filed an Appeal before the First Respondent under Section 21(1) (b) of the Pondicherry School Education Act, 1987.

5.Facts relating to the separate but similar Impugned Orders: By Impugned Orders dated 23.01.2006, in each of the Writ Petitions, the First Respondent held that the Code and Service Rules of the School do not state that employees who resign are not entitled to pension. It was further held that employees who work for more than 20 years but less than 33 years are entitled to proportional pension and those who have put in 33 years of service are entitled to full pension. As regards gratuity, the First Respondent held that the Pondicherry School Education Act, 1987(the Pondicherry School Education Act) specifies that persons employed in any recognised School can claim gratuity as per the agreement or contract of service if it is more favourable to the employee than that provided under the Pondicherry School Education Act. On this basis, the Appeals filed by the management were rejected. The said separate Orders dated 23.01.2006 are the Impugned Orders in the Writ Petitions.

6.Therefore, the question that arises for consideration in both Writ Petitions is whether the respective Second Respondents therein are entitled to pension and gratuity as per the applicable rules.

7.At the hearing, the learned counsel appearing for the Petitioner referred to the Conduct and Service Rules of the School dated 14.09.1999. In particular, he referred to the specific Rule relating to pension, which reads, in relevant part, as under:

IV. Pension

1. Only those who retire at the age of superannuation are eligible for pension.

2. The minimum qualifying service of 20 years is required to have any pension claim.

3. Full pension can be claimed by an employee who has put in maximum service of 33 years in the same institution or institutes under the same management.

8.Based on the above Rule, the contention of the learned counsel for the Petitioner was that the Second Respondent, in both Writ Petitions, is not entitled to pension because she did not retire at the age of superannuation and instead submitted

her resignation prematurely. In order to substantiate this submission, the learned counsel relied upon the judgment of the Supreme Court in UCO BANK Vs. SANWAR MAL, (2004) 4 SCC 412, wherein it was held that the pension scheme therein, which did not permit employees who resigned from service from becoming members of the pension scheme, was valid because retirees and resignees may be classified under separate categories for the purpose of second retirement benefit. As regards gratuity, he referred to the relevant Rule, which reads as under:

V. Gratuity

Those who have put in more than 20 years of service are eligible for gratuity.

Note: Half the basic pay last drawn for every completed year of service.

9. In view of the fact that the Second Respondent, in each of the Writ Petitions, has undoubtedly worked as a Teacher in the Petitioner's School for more than 20 years, the claim for gratuity was not seriously disputed.

10. The learned counsel for the Petitioner also submitted that the Pondicherry School Education Act does not apply to private, un-aided, minority institutions such as the Petitioner herein in respect of terms and conditions of service and further submitted that this question is pending adjudication before a Division Bench of this Court.

11. In reply, the learned counsel for the Second Respondent, in both Writ Petitions, submitted that the Second Respondents therein were provided a copy of the Code and Service Rules of Employees in Cluny Schools along with a letter dated 15.07.1992 and that the Second Respondent, in each case, is entitled both to pension and gratuity as per the said rules. In particular, the learned counsel referred to the relevant rule relating to pension, which reads, in relevant part, as under:

IV Pension.

1. Full pension can be claimed by an employee who has put in maximum service of 33 years in the same institution or institutes under the same management.

2. A minimum qualifying service of 20 years is required to have any pension claim.

12. On the above basis, the learned counsel for the Second Respondent submitted that the rules do not state that a person who resigns is not entitled to pension. He further submitted that the amendment of the rules in the year 1999 was not brought to the notice of the Second Respondent and that the amendment cannot be applied with regard to the Second Respondent. He also

submitted that a sum of Rs.200/- was collected towards teachers' pension on a monthly basis. In order to substantiate his submissions, he referred to a judgment of this Court in NALLAMADAN Vs. ADMINISTRATIVE OFFICER, TOWN PANCHAYAT, reported in (2000) 1 MLJ 554 wherein the judgment of the Hon'ble Supreme Court in Dr. UMA AGARWAL Vs. STATE OF UP, 1999-I-LLJ 1335 was relied upon for the principle that pension is a right of a Government servant and not a bounty.

13.The learned counsel for the First Respondent submitted that the Second Respondent is entitled to pension and gratuity both under the relevant service rules and the Pondicherry School Education Act and the rules framed thereunder and that, therefore, the Writ Petitions are liable to be dismissed.

14.By way of rejoinder submissions, the learned counsel for the Petitioner submitted that the collection of Rs.200/- per month towards teachers pension does not advance the case of the Second Respondent because the relevant consideration here is entitlement to pension as per the applicable service rules. In response to a question as to whether the amended rules were communicated to employees such as the Second Respondent in the respective cases, the learned counsel stated that there is no proof of communication.

15.The affidavit, counter affidavit, documents on record, including relevant rules, and oral submissions of all parties were duly considered.

16.On examining the relevant service rules, it is evident that gratuity is payable to employees who complete 20 years and that the amendment does not make a difference as regards gratuity. As regards pension, the un-amended version of the service rules, which was provided to the Second Respondent in each Writ Petition, does not stipulate that the employee concerned should attain superannuation in order to avail pension. As long as the employee concerned has completed not less than 20 years of qualifying service, the relevant rule provides for payment of proportionate pension. If the said employee has completed not less than 33 years of service, full pension is payable. In W.P.No.6136 of 2006, the Second Respondent /employee admittedly worked as a teacher from 1974 to 2005, if reckoned from the date of joining as an untrained teacher, i.e. a period of about 31 years, and from 1980 to 2005, if reckoned from the date of joining as a trained teacher, i.e. a period of about 25 years. Therefore, the Second Respondent therein would be entitled to proportionate pension because she comes within the category of persons who have completed between 20 and 33 years of service. The Second Respondent in W.P.No.6137 of 2006 admittedly worked from 1969 to 2005, i.e. a period of about 36 years. Accordingly, as per the relevant rule, she would

be entitled to full pension. The judgment of the Hon'ble Supreme Court that was reported in (2004) 4 SCC 412, which was relied upon by the learned counsel for the Petitioner and is cited supra, is in the factual context of the applicable service rule not permitting resignees from joining a contributory pension scheme and is, therefore, distinguishable on facts. The right to proportionate and full pension, respectively, in the two Writ Petitions became vested on completion of 20 years and 33 years, respectively, and this right cannot be divested by an amendment to the service rules, which was admittedly made subsequently and not communicated to the Second Respondent in each Writ petition. In view of the fact that the Second Respondent, in each Writ Petition, is entitled to pension and gratuity under the service rules of the Petitioner, the question of applicability of the Pondicherry School Education Act and the rules framed thereunder with regard to the conditions of service of the Second Respondent is not being examined. In this regard, it is also relevant to point out that the learned counsel for the Petitioner submitted that the said question is under consideration by a Division Bench of this Court. Nevertheless, the Pondicherry School Education Act is clearly applicable with regard to providing an appellate remedy for aggrieved persons, such as the Second Respondent herein, and that position is not contested.

17. For the foregoing reasons, there is no infirmity in the Impugned Orders. Consequently, the Writ Petitions are liable to be and are dismissed and the Petitioner is directed to settle the claims of the respective Second Respondent within 60 days of receipt of a copy of this order along with interest at 6% per annum on over due amounts. There shall be no order as to costs. Consequently, connected WPMPs. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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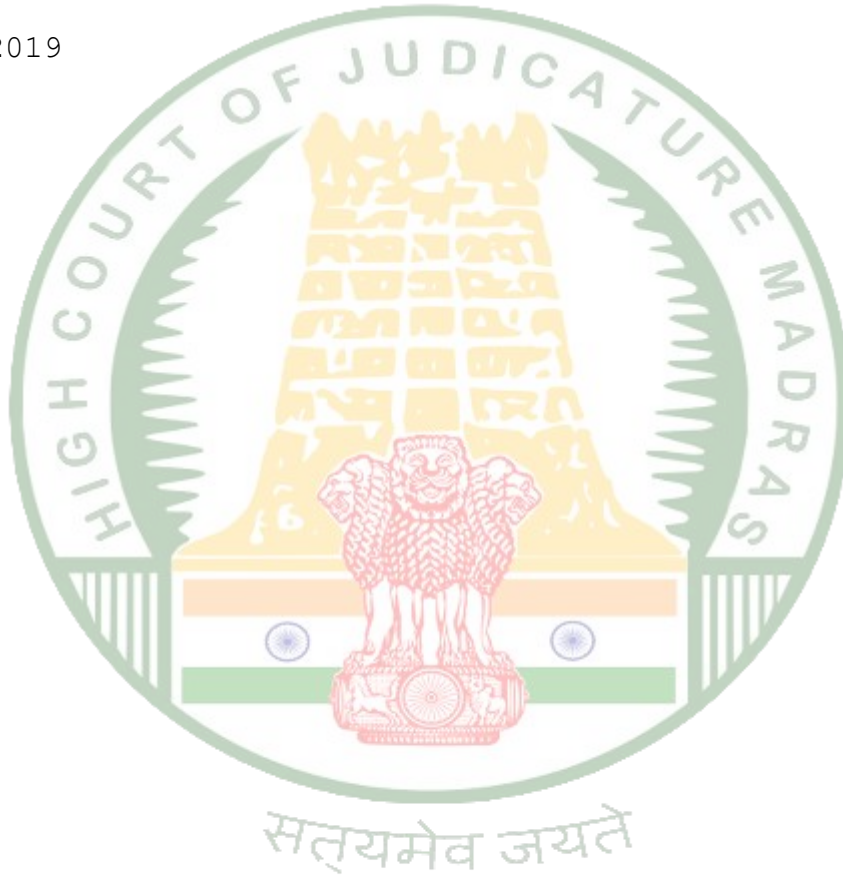
To

The Director of School Education,
Government of Pondicherry.
Pondicherry.

+2cc to M/s.Sai & Bharath, Advocate sr.39703, 39704
+1cc to Government Pleader, Puducherry sr.40850

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