

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-09-2019

CORAM

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD,J.,

W.P.No.5345 of 2010

and

M.P.No.1 of 2010

P.K.Gomathi

.. Petitioner

- Vs. -

1.The Central Board of Secondary Education,
Represented by its Secretary,
PS-1, Institutional Area, I.P.Extn,
Patparangi, Delhi-110092.
Having its regional Office at,
Plot No.1630, A, "J" Block,
16th Main Road,
Anna Nagar West,
Chennai-600 040.

2.The Director General,
Ordinance Factory Board,
Explanade East,
Calcutta-700 069.

3.The General Manager,
Heavy Vehicles Factory,
Avadi, Chennai-600 054.

4.HVF English Medium Educational Society
Represented by its Secretary,
Vijayanta Senior Secondary School,
Near EME Lines, HVF Estate,
Avadi, Chennai 54.

5.The Secretary,
Vijayanta Senior Secondary School,
Near EME Lines, HVF Estate,
Avadi, Chennai-54

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ in the nature of writ of mandamus or any other appropriate writ or direction for bearing the respondents from retiring the petitioner before the end of academic year 2011-2012.

For Petitioner : Mrs.V.Srimathi
for Mr.V.Raghavachari

For R2 and R5 : Mr.K.Gunasekar (SPCCG)

O R D E R

This Writ Petition has been filed by the petitioner seeking for the issuance of Writ of Mandamus, to forbear the respondents from retiring her before the end of an academic year 2011-2012.

2 According to the petitioner, she was a teacher working in 4th respondent's school which is affiliated to the first respondent viz., Central Board of Secondary Education. According to the Bye Laws of the 1st respondent, the age of retirement of the teaching staff is 60 years. Rule 30 of the Bye Laws provides for retirements of employee at the age of 60, which reads as under:-

" Rule 30- Each employee including Head of Institution shall retire from service on attaining the age of 60. However, if the age of superannuation falls during the Academic session, the concerned employee will retire at the end of the academic session."

3 The petitioner's date of birth is 17.05.1952 and if the age of retirement is taken into account as 60 years, retirement falls due only in May 2012.

4 The 2nd respondent factory was formed under the control of Ministry of Defence and comes under the control of Ordinance Factory Board (OFB) at Calcutta. The 4th respondent school run by the Heavy Vehicle Factory, the 2nd respondent herein and a society was formed to run the school. The 2nd and 3rd respondents have financial supervisory control over the school. The members of the society are appointed by the General Manager of HVF.

5 According to the petitioner, as per Rule 24 of the CBSE Bye Laws, the school is permitted to frame their own service regulations for its employees. But, as far as the 4th respondent school is concerned, no service regulations have been formed and therefore, they are governed by the Bye Laws of the 1st respondent. In anticipation of impending retirement of the petitioner at the age of 58 in May 2010, a representation was sent by the petitioner on 05.03.2010. However, since no action was forth coming from the respondents, the petitioner has come forward with the present Writ Petition.

6 This Court while admitting the Writ Petition on 18.03.2010, has granted interim injunction restraining the respondents from retiring the petitioner prior to the academic year 2011-2012. Thereafter, it appears that a vacate stay petition was moved on behalf of the respondents. By order dated 22.01.2011, this Court dismissed the said vacate stay petition and made the interim order absolute. By virtue of the same, the petitioner had continued her services in the 4th respondent's school till she attained the age of 60 years.

7 In fact, the issue involved in the writ petition is no longer res integra, since in similar writ petition in W.P.No.9165 of 2019 filed by one of the erstwhile teacher of the same school, this Court has granted the relief to the petitioner therein by directing the respondents therein to reinstate the petitioner in service and continue her in service till she attains the age of 60 years. This Court also directed the respondents to pay her all benefits as admissible. It is worthwhile, to extract the relevant portion of the order as found in Paragraph Nos.13 to 15 as under:

"13. It is a fact that the 4th respondent school is affiliated to the 1st respondent viz., CBSE and the Bye Laws of the CBSE are applicable to the 4th respondent school in which the petitioner was employed as a Teacher. In respect of the same school, two learned Judges of this Court have clearly held that the Teachers were entitled to serve the school till they attain the 60 years of age. Both the learned Judges have relied on Bye Laws 30 of the CBSE which governed the service conditions of the Teachers of the 4th respondent school. Moreover, in the absence of a clear Bye Laws in regard to retirement age of the petitioner, as far as the 4th respondent school is concerned, the Bye Laws of the CBSE is automatically made applicable with reference to the service conditions of the employees of the 4th respondent school. When similarly placed Teachers have obtained orders from this Court holding that their age of retirement is only 60 years and in fact, they continued till the age of 60 years, this Court does not think that the present petitioner can be treated differently in the matter of retirement age. If any such different treatment is to be meted out that could be grossly violative of Articles 14 and 16 of the Constitution of India.

"14. Even otherwise, if the amendment to the Bye Laws which came into effect 19.10.2018 is to be considered, as rightly relied on by the learned

counsel for the petitioner in a decision of this Court reported in 2012 (4) CTC 577 (cited supra), such amendment prescribing a different condition of service can be made applicable only prospectively and the petitioner, who joined much before the amendment was brought in, cannot be allowed to suffer a new condition of service to her detriment. Admittedly, the petitioner was appointed as Teacher in 1988, 20th 13. It is a fact that the 4th respondent school is affiliated to the 1st respondent viz., CBSE and the Bye Laws of the CBSE are applicable to the 4th respondent school in which the petitioner was employed as a Teacher. In respect of the same school, two learned Judges of this Court have clearly held that the Teachers were entitled to serve the school till they attain the 60 years of age. Both the learned Judges have relied on Bye Laws 30 of the CBSE which governed the service conditions of the Teachers of the 4th respondent school. Moreover, in the absence of a clear Bye Laws in regard to retirement age of the petitioner, as far as the 4th respondent school is concerned, the Bye Laws of the CBSE is automatically made applicable with reference to the service conditions of the employees of the 4th respondent school. When similarly placed Teachers have obtained orders from this Court holding that their age of retirement is only 60 years and in fact, they continued till the age of 60 years, this Court does not think that the present petitioner can be treated differently in the matter of retirement age. If any such different treatment is to be meted out that could be grossly violative of Articles 14 and 16 of the Constitution of India.

"15. For the above said reason, this Court is of the considered view that the petitioner has made out a clear case for grant of relief as the claim of the petitioner is squarely covered by the decision cited by the learned counsel appearing for the petitioner and also on the basis of the Bye Laws of the 1st respondent Board. In the said circumstances, the Writ Petition is allowed and a writ of mandamus is issued directing the respondents 4 and 5 to reinstate the petitioner in service as Teacher and continue her in service till she attains the age of 60 years and pay her all benefits as admissible. The respondents 4 and 5 are directed to pass appropriate orders in complying with a direction within a period of two

weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed." years before the amendment and therefore, such amendment can at best be applied prospectively, when staff are appointed after the said date of appointment. Further, the fact of the 4th respondent school affiliated with the 1st respondent Board would mean that the Bye Laws of the Board would automatically apply including the service conditions of the employees and the Bye Laws of the 1st respondent Board shall prevail over any local arrangement of the 4th respondent school with its staff. In any case, the absence of any particular service conditions regarding age of retirement formulated by the 4th respondent society has not been disputed except stating that the power is with the Managing Committee. Such general power vested with the Managing Committee does not empower the 4th respondent school to retire its staff contrary to the specific Bye Laws of the 1st respondent Board."

8 Having regard to the above, this Court is of the view that the issue involved in the present Writ Petition is squarely covered by the above said order. Accordingly, the petitioner is also entitled to the relief as sought for in the writ petition.

9 The learned counsel for the respondents would submit that by virtue of interim order of this Court, the petitioner was allowed to work till she attained the age of 60 years and therefore, she is entitled to all the benefits admissible and payable to her if she was not already paid.

10 The writ petition is allowed and the respondents are directed to pay all the benefits admissible and payable to the petitioner till she worked at the age of 60 years. The respondents are directed to pass orders in compliance with the direction within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Secretary,
Central Board of Secondary Education,
PS-1, Institutional Area, I.P.Extn,
Patparangi, Delhi-110092.
Having its regional Office at,
Plot No.1630, A, "J" Block,
16th Main Road, Anna Nagar West,
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2.The Director General,
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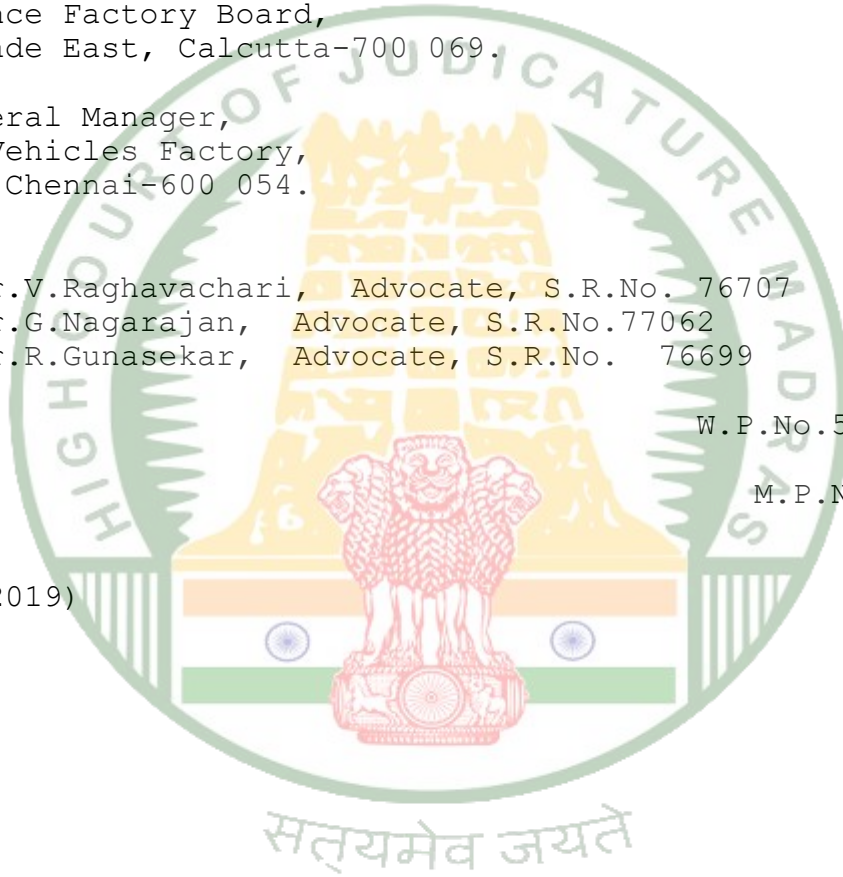
+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 76707

+1cc to Mr.G.Nagarajan, Advocate, S.R.No.77062

+1cc to Mr.R.Gunasekar, Advocate, S.R.No. 76699

W.P.No.5345 of 2010
and
M.P.No.1 of 2010

RJI (CO)
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