

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.9577 of 2013

M.Grace Moses

.. Petitioner

Vs

- 1.The Accountant-General (A&E)
Office of the Accountant-General
Anna Salai
Chennai
- 2.The Assistant Elementary Educational
Officer (Rural)
Thanjavur
- 3.State of Tamil Nadu, rep. through
the Secretary to Government
Education Department
Fort St.George
Chennai-600 009
- 4.The Correspondent
Good Shepherd Middle School
Ramapuram PO Thanjavur .. Respondents
R4 impleaded as per order dated 18.04.2013
in M.P.No.1/2013.

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus directing the respondents to disburse or grant the pension to the petitioner from 31.03.2005 with commercial interest thereon till payment of pension and with necessary direction or relief.

For Petitioner :Mr.S.Pattabiraman

For Respondents :Mr.K.Karthikeyan,
Govt.Advocate
for R2 and R3.

Mrs.Hema Muralikrishnan for R1
Mr.S.Thenmozhi for R4.

ORDER

The petitioner joined as Teacher in Joncy Rani Primary School (Aided), Madurai, on 22.09.1969 and reached the age of superannuation on 31.03.2005.

2. According to the petitioner, the 2nd respondent/Assistant Elementary Educational Officer (Rural), by her letter dated 12.03.2012, verified the Pension Proposal stating that the qualified service as 9 years 8 months 23 days instead of 9 years, 9 months. It is further stated that 7 days strike period (24.10.2002 to 30.10.2002) unearned leave on private affairs (i.e) leave on loss of pay was ordered to be treated as "Duty Pay" as per G.O.Ms.No.106/gkeprP(nf)/Dept, dated 31.07.2006. It is further stated that necessary entries were made in S.R., of the individual by Secretary of the School and was countersigned by the 2nd respondent office. The 2nd respondent, thus requested the Accountant General, (A&E), Chennai-18, to accept the proposal for Pension towards claim of Family Pension, balance of Gratuity and Commutation Value of Pension claimed in the proposal.

3. The 1st respondent/Principal Accountant General (Accounts & Entitlements) Tamil Nadu, by its order dated 02.01.2013, stated that the qualifying service is shown only as 9 years, 8 months and 27 days and not 9 years, 9 months as per letter dated 28.10.2012, as such, no action is required and the petitioner was asked to address to the Government to condone the shortfall months in qualifying service for getting minimum pension by the petitioner.

4. The first respondent filed counter affidavit, wherein, it is stated that the net qualifying service of the petitioner works out to 9 years 8 months and 20 days. It is further stated that Rule 43(3) of Tamil Nadu Pension Rules 1978 provides for calculating the fraction of a year equal to 3 months and above as a completed one half year. But the last spell of qualifying service of the petitioner is only 2 months and 27 days. As the fraction of the year is less than 3 months, this spell cannot be counted as a complete one half year, thus, there is shortfall in the required minimum qualifying service of 10 years and making the petitioner ineligible for pension.

5. During the course of argument, it is brought to the notice of this court that a Division Bench of this court in W.A.No.1122 of 2013 dated 27.03.2014 [1.The Secretary to Government, Planning, Development & Special Initiatives Department, Secretariat, Fort St.George, Chennai-9 and another ..Vs.. R.Baskaradoss] relying on earlier decision of this court in W.P.No.45465 of 2002 dated 4.10.2007 (Union of India, rep. by the Secretary, Department of Posts, Dak Bhawan, New Delhi 110 001 Vs. M.R.Palanisamy) held that the petitioner therein is to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days. The said judgment was challenged

before the Hon'ble Supreme Court in S.L.P.No.13829 of 2008 and the same was dismissed by the Honourable Supreme Court on 17.10.2008. Thereafter, the department sanctioned pension to the said person/writ petitioner therein. The Division Bench of this court also cited other decisions of this court, wherein, this court following the above referred to judgment passed in W.P.No.45465 of 2002 dated 4.10.2007, and taking note of the fact that the said issue on appeal has been dismissed by the Honourable Supreme Court in S.L.P.No.13829 of 2009, directed the appellants/State to sanction pension and other consequential benefits to the writ petitioner with arrears. The relevant paragraphs of the said judgment is extracted as under:-

" 20. Unfortunately, in so far as, the respondent herein is concerned, he has attained the age of superannuation on 31.7.2008 itself and therefore, the benefits of the said Government Order could not be applicable to him. The fact remains that if half of the temporary service on consolidated wage plus the regular service of 1 year, 2 months and 28 days are taken into consideration, then the respondent had put in 9 years, 7 months and 17 days of service.

21. In an unreported judgment dated 06.12.2013 made in W.P.No.29896 of 2013, as stated supra, the Division Bench of this Court, exhaustively considered the said issue and, it is useful and relevant to extract Paragraph 8 to 11 in the said judgment:-

"8.The learned counsel for the first respondent also relied on the judgment of the Division Bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India, rep. by the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 v. M.R.Palanisamy), wherein in similar issue was raised by an E.D.Staff, who served for 29 years before his permanent absorption as Group "D" staff and he was ordered to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D. Staff service. The said judgment was challenged before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008. Thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 9.10.2009.

9. Even though the order of the Division

Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the relief only to the first respondent in the said Writ Petition, another Division Bench of this Court in Writ Petition No.22833 of 2010 (T.Jayaraman v. The Post Master General, Central Region, T.N.Circle, Trichy and others) noticing the similar set of facts allowed the Writ Petition by order dated 10.11.2010 noticing the earlier order, which was confirmed by the Supreme Court and which was also implemented by the Department.

10. Again, in the order dated 14.2.2013 passed by this Court in Writ Petition No.22496 of 2009 (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. G.Thulasidasan), similarly placed person was ordered to be granted pension, considering the long number of years of service as E.D. staff, though the person was not having ten years of completed pensionable service.

11. A Division Bench of Karnataka High Court by order dated 25.3.2013 in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order."

22. In the considered opinion of this Court, the ratio laid down in the above cited decision is ipso facto applicable to facts of the present case. Though it was under an analogous scheme, namely, Contributory Pension Scheme under Central Civil Services (Pension) Rules. The respondent herein had put in 9 years, 7 months and 17 days of service and therefore, the said service is to be rounded off to 10 years and in that event, the new pension scheme will not apply and consequently, the respondent herein is entitled to the relief as prayed for in the writ petition.

23. As already pointed out, inspite of the fact that the request made by the respondent herein came to be rejected in G.O.Ms.No.245, dated 23.12.2013, the learned Additional Advocate General insisted this Court to dispose of this appeal on merits and therefore, the order which came to be passed subsequent to the disposal of the writ petition, cannot be put against the respondent/writ petitioner.

24. In the light of the reasons assigned above,

this Court is of the considered view that there are no merits in this writ appeal and it deserves for dismissal and accordingly dismissed. No costs. The appellants are directed to sanction pension and other consequential benefits to the respondent/writ petitioner from 01.8.2008 onwards, with arrears, within a period of twelve weeks from the date of receipt of a copy of this judgment. Consequently, M.P.No.1 of 2013 and M.P.No.1 of 2014 are closed."

6. The learned counsel who assisted the court in this matter, has also referred to a judgment of a Division Bench of this court in W.A.No.523 of 2015 dated 09.04.2015 [The Secretary to Government, Transport Department, Secretariat, Chennai-600 009 Vs. I.S.Kamachi and another], wherein, the Division Bench of this Court, had pointed out a similar issue in respect of pension in W.P.No.22833 of 2010 and held that if a person is having more than 9 years and 6 months of pensionable service, the said period should be treated as 10 years of service for the purpose of sanction of pension. The Division Bench of this Court, has held as under:-

"7. Rule 43(3) of the Tamil Nadu Pension Rules, 1978 clearly prescribes that if fraction of service is within three months, it should be treated as half year of service. In that event, after treating the half of the service spent as daily wages, the total service of the writ petitioner is computed to be more than 9 years and 6 months. Applying the provision of Rule 43(3) of the Tamil Nadu Pension Rules, the remaining period has to be treated as half year service. We do not find any infirmity or illegality in the order rendered by the learned Single Judge, warranting interference. "

7. Following the above decisions of this court, this court is of the considered view that the stand of the 1st respondent that the petitioner is ineligible for pension cannot be accepted. Since, the first respondent, in their letter dated 02.01.2013, has stated that the qualifying service is shown as 9 years 8 months and 27 days. As per the above referred to decisions of this court and also applying Rule 43(3) of the Tamil Nadu Pension Rules, 1978, if fraction of service is within three months, it should be treated as half year service. In this case, the petitioner's service is more than 9 years and 6 months. In such view of the matter, if a person is having more than 9 years and 6 months of pensionable service, the said period should be treated as 10 years of service for the purpose of sanction of pension.

8. It is a matter of record that the 1st respondent-Office of the Accountant General (A&E) Tamil Nadu, Chennai by its Admissibility Report of Entitlements of Pensionary Benefits of retiring employees, dated 21.03.2006, while giving the details of PPO, finally given the remarks as under:-

"Remarks: As the official has put in only 9 years of qualifying service, she is not eligible for pension."

The endorsement of the said Registered Post carries the seal of the 2nd respondent, which go to show that the pension proposal has been returned back to the 2nd respondent.

9. While the matter stood thus, this court, while applying the Tamil Nadu Pension Rules, 1978 and also the Division Bench judgement referred to above to the facts of the present case, this court is inclined to pass the following orders:-

(i) The 2nd respondent is directed to submit the pension proposal once again to the 1st respondent, within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of the said pension proposal from the 2nd respondent, the 1st respondent shall consider the case of the writ petitioner in the light of the above said judgments of this court and pass appropriate orders in respect of sanctioning of pension and other terminal benefits due to the petitioner, if she is otherwise eligible. Such orders shall be passed by the first respondent, within a period of eight weeks from the date of receipt of Pension Proposal from the 1st respondent.

10. The Writ Petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Accountant-General (A&E)
Office of the Accountant-General
Anna Salai, Chennai

2.The Assistant Elementary Educational
Officer (Rural), Thanjavur

3.The Secretary to Government
Education Department
Fort St.George
Chennai-600 009

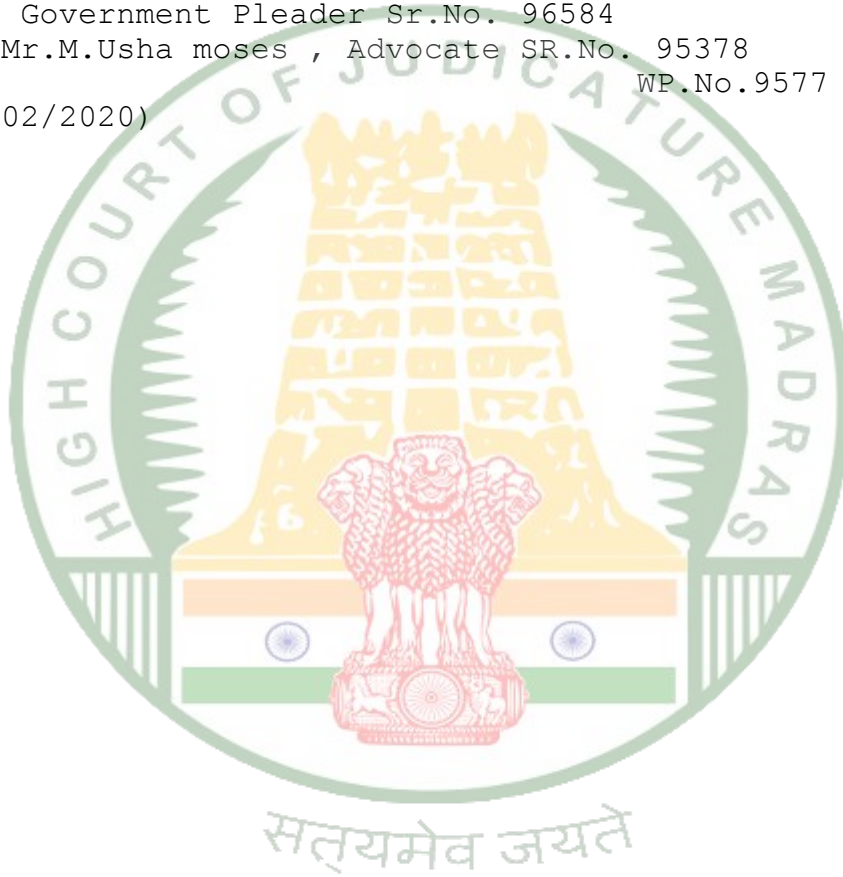
+1cc to M/s.Hema Muralikrishnan , Advocate SR.No. 95331

+1 cc to Government Pleader Sr.No. 96584

+1cc to Mr.M.Usha moses , Advocate SR.No. 95378

WP.No.9577 of 2013

A.SK(17/02/2020)



WEB COPY