

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18982 & 18983 of 2018

O.Muniyappa ..Petitioner in W.P.No.18982/2018

B.Gopal ..Petitioner in W.P.No.18983/2018

vs

1.The Secretary to Government
Education Department
Government of Tamilnadu
Fort St.George
Chennai - 600 009

2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai - 600 006

3.The District Elementary Educational Officer
Krishnagiri.

4.The Assistant Elementary Educational Officer
Shoolagiri
Krishnagiri District,
Pincode - 635 117

.. Respondents in both W.Ps

Prayer in W.P.No.18982 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 4th respondent to consider and pass orders on the petitioner's representation dated 3.3.2015 in the light of the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.6075 of 1994 dated 20.12.1994 for taking into account of the apprentice period/training period as the service period and grant all monetary benefits and other pensionary within a time frame as may be fixed by this Honourable Court.

Prayer in W.P.No.18983 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 3rd respondent to consider and pass orders on the petitioner's representation dated 3.3.2015 in the

light of the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.6075 of 1994 dated 20.12.1994 for taking into account of the apprentice period/training period as the service period and grant all monetary benefits and other pensionary within a time frame as may be fixed by this Honourable Court.

For Petitioners : Mr.R.Kamaraj (in both W.Ps)

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader
(in both W.Ps)

C O M M O N O R D E R

The relief sought for in the present writ petitions is for a direction to direct the 3rd and 4th respondents to consider and pass orders on the petitioners representations dated 3.3.2015 in the light of the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.6075 of 1994 dated 20.12.1994 for taking into account of the apprentice period/training period as the service period and grant all monetary benefits.

2.The writ petitioner in W.P.No.18982 of 2018 is aged about 72 years old, who opted to file the present writ petition after a lapse of many years. The writ petitioner served as an untrained teacher from 06.11.1963 to 30.04.1964 at Panchayat Union Elementary School, Punnagaram, Shoolagiri Union and 01.07.1964 to 30.04.1965 at Punnagaram Elementary School, Punnagaram and from 23.07.1965 to 31.05.1966, Kottangiri Elementary School. From 05.06.1966 to 30.04.1967 at Gudisadanapalli Primary School, Shoolagiri Union and from 09.07.1967 to 30.04.1968 at Primary School, Bukkasagaram and totally he had worked for four years. Thereafter, he worked as the Apprentice Teacher, after training from 14.12.1971 to 08.09.1973 for one year and eight months. He was absorbed as the Higher Grade Teacher from 08.09.1973 and absorbed as the secondary grade teacher from 08.09.1973 onwards. He retired from service on 31.08.2001 as Primary School, Alasadanapalli, Shoolagiri Union.

3.The writ petitioner in W.P.No.18983 of 2018 is aged about 72 years old, who opted to file the present writ petition after a lapse of many years. The writ petitioner was appointed as untrained teacher till 30.4.1966 in the Shoolagiri Panchayat Union School, Nallarallapalli. As proceedings of the Shoolagiri Commissioner Roc.No.5301/65/C1 dated 20.07.1965 having a total untrained Teacher service of 9 months and 7 days. Thereafter, he worked as the SG(Selection Grade) apprentice Teacher, after training from 14.12.1971 to 07.09.1973 for one year six months and twenty five days in the P.U.P.School, Agaram, Shoolagiri

Block. He was absorbed as a regular Higher grade Teacher from 08.09.1973 in P.U.M School, A.Setipalli, Shoolagiri Block and absorbed as the Secondary Grade Teacher from 08.09.1973. Untrained and Apprentices Teachers (Untrained Service from 23.07.1965 to 30.04.1966 and Apprentice service from 14.12.1997 to 07.09.1973) both Services 2 years and 4 months was not taken into account as the service period and he was placed much before the Juniors in the Seniority list and on account of that, he was deprived of my due promotion, increment and other allowances. He retired from service on 01.11.2002 in the Primary School, Podur, Shoolagiri Union. His total service as Secondary Grade is 29 Years, 1 Month and 23 Days.

4.The claim of the writ petitioners are that the above untrained and Apprenticeship period was not taken into account as the service period and therefore, their pension and other terminal benefits are to be revised by counting the training period as the qualifying service. First of all, the writ petitioners attained the age of superannuation and retired from service on 31.08.2001 & on 01.11.2002. The present writ petitions are filed after a lapse of about more than 16 years from the date of retirement of the writ petitioners from service. Thus, even in claiming the service benefits, there is a delay of more than 16 years in filing the present writ petitions.

5.This apart, the relief sought for in the present writ petitions state that the representations submitted by the writ petitioner should be considered based on the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.6075/1994 dated 20.12.1994. The Tribunal passed the orders in the year 1994 before the retirement of the writ petitioners. Thus, the petitioners ought to have pursued their remedies at least soon after the passing of the order by the Tribunal during the year 1994. The writ petitioners were in service during the year 1994 till retirement. They had not taken any action to redress their grievances regarding the counting of the period of training for the purpose of pensionary benefits. The pensionary benefits were settled in favour of the writ petitioners in the year 2001. Based on the last drawn pay, the writ petitioners are receiving pension for the past 18 years.

6.Under these circumstances, this Court is of the considered opinion that treating the training period of the year 1963 to 1965 as a qualifying service after this length of time cannot be granted.

7.The learned counsel for the writ petitioners cited the judgment of the Hon'ble Division Bench dated 03.01.2019 in W.A.Nos.34 & etc., of 2017, he refers paragraph 8 of the judgment, which reads as under:-

"8. Though Mr.C.Munusamy, learned Special Government Pleader (Education) states that long after their reinstatement, respondents have approached this Court and that a huge amount has to be paid, that cannot be a ground to deprive the respondents of their entitlement to selection grade / special grade to pay which the appellants ought to have paid. Courts have held that in the matter of fixation of pay and pension, there is a continuing cause and for the above said reason, we are not inclined to accept the said contention. Following the above decision, all the writ appeals are dismissed. The appellants are directed to grant the benefits of G.O.Ms.No.210, School Education (G1) Department, dated 14.08.2009, to all the respondents and fix their pay in Selection Grade / Special Grade in the post of Middle School Headmaster, by counting the service rendered as Secondary Grade Teacher/Primary School Headmaster/Elementary School Headmaster, from the date of their promotion to the post of Middle School Headmaster, if they were not given the same already, with all monetary benefits and the pensionary benefits with arrears till the date of his death. Though, Mr.C.Munusamy, learned Special Government Pleader (Education) sought four months time to complete the exercise of revising the pay in the Selection Grade / Special Grade to the respondents, and consequently revise the pension / family pension, considering the long period of litigation, which the retired employees / members of the family of the retired employees have to undergo, litigation expenses etc., we, deem it fit, to direct the appellants, to fix the pay in the Selection Grade / Special Grade, within a period of four weeks, from the date of receipt of a copy of this judgement and consequently, the appellants are further directed to revise the pension / family pension, and disburse both arrears of salary and differential pension, within a period of eight weeks, thereafter. Consequently, connected civil miscellaneous petitions are closed. No costs."

8.The facts and circumstances of the cases decided by the Hon'ble Division Bench is not applicable with reference to the facts and circumstances of the present case on hand.

9.This apart, the Hon'ble Supreme Court of India in the case of The Government of India and another Vs. P.Venkatesh in Civil Appeal No.2425 of 2019 dated 01.03.2019, held that "This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of

cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute".

10.As far as the cause now raised in the present writ petitions, the said cause initially aroused during the year 1994 when the Tribunal passed and even prior to that in view of the fact that the writ petitioners had completed the training in between the years 1963 to 1968. Thus, now after a lapse of so many years, the claim set out in the present writ petitions cannot be considered by this Court.

11.This apart, the writ petitioners has slept over their right long back and now, they cannot wake up one fine morning and knock the doors of this Court in respect of the grievances, which aroused several years back. Even to consider the representation, the direction cannot be issued as the Hon'ble Supreme Court of India held that in the absence of establishing any legal right and even in case of issuing such direction, the Court should ensure that the issues are considered and settled.

12.This being the factum, the relief as such sought for in these present writ petitions cannot be granted. Accordingly, these writ petitions are devoid of merits and hence dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
Education Department
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Chennai - 600 009

2.The Director of Elementary Education,
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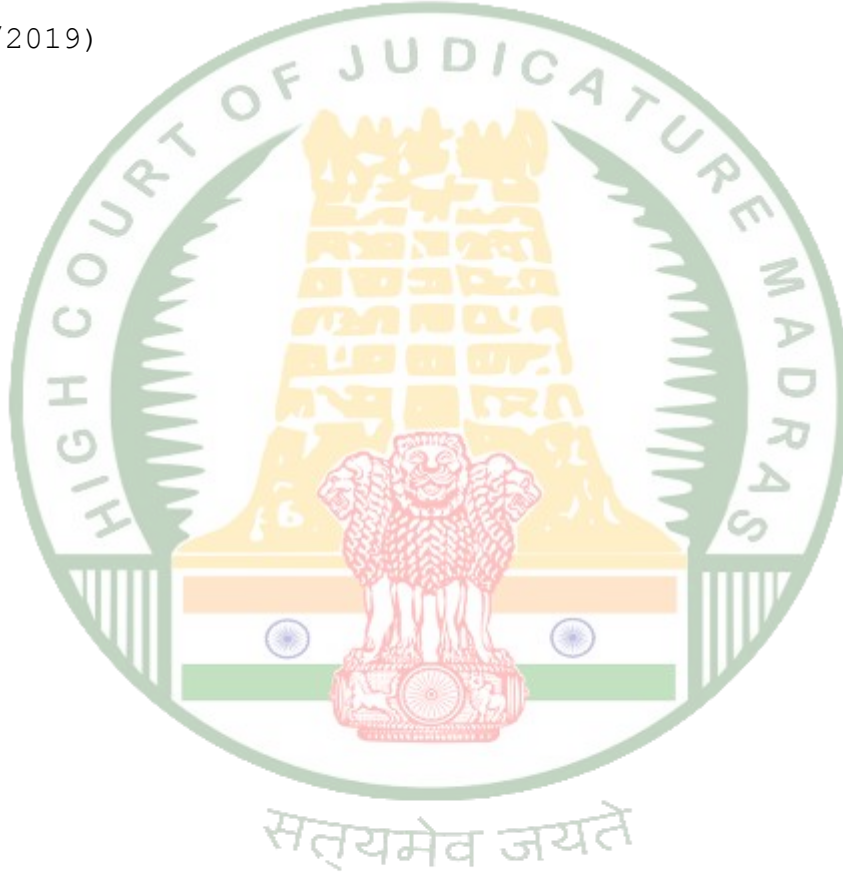
4.The Assistant Elementary Educational Officer
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Pincode - 635 117

+2ccs to Mr.R.Kamaraj, Advocate, S.R.No.24511 and 54512

W.P.Nos.18982 & 18983 of 2018

PPA (CO)

RRS (23/04/2019)



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