

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.26575 of 2019

R.Ramaiyan

... Petitioner

Vs.

1. The Special Commissioner
Directorate of Employment and
Training, Guindy
Chennai - 600 032.

2. The Manager and Correspondent
Katpadi Industrial Institute
No.20, Chittoor Road
Katpadi
Vellore District.

3. The Accountant General (A & E)
Accountant General Office
No.361, Anna Salai
Teynampet, Chennai - 600 018.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to approve the proposal sent by the 2nd respondent for the promotion of the petitioner as Junior Assistant and for direction to the 2nd respondent to submit proposals for pension and allied benefits to the 3rd respondent and for the payment of pension and allied benefits with arrears from the date of retirement of petitioner.

For Petitioner : Mr.A.R.Nixon
For Respondents : Mrs.A.Sri Jayanthi,
Additional Government Pleader.

O R D E R

The writ petition has been filed seeking direction to the 1st respondent to approve the proposal sent by the 2nd respondent for the promotion of the petitioner as Junior Assistant and for

direction to the 2nd respondent to submit proposals for pension and allied benefits to the 3rd respondent and for the payment of pension and allied benefits with arrears from the date of retirement of petitioner.

2.The petitioner was appointed as Office Assistant in Katpadi Industrial Institute, which is an aided school run and managed by the CSI Diocese of Vellore. Subsequently, on 06.01.1983, he was promoted as Assistant School Clerk based on his qualification and the said post is equivalent to that of the Junior Assistant, non-teaching staff. Thereafter, the school management sent proposals on 08.08.2008 to the 1st respondent for approval of petitioner's promotion as School Clerk as such approval is mandatory. Despite several reminders by the 2nd respondent, viz., school management, the 1st respondent did not forward any response. Therefore, the management sent a reminder on 03.03.2011 quoting the letter RC.N.P002/1037365/85, dated 04.01.1988 and G.O.Ms.No.2477 Labour and Employment Department dated 11.11.1988 and made a desperate plea to consider the proposals sent on 08.08.2008 informing about the continuous service of the petitioner as Assistant School Clerk from 06.01.1983. However, the 1st respondent vide his letter in Na.Ka.No.Tho.Pa-2/43152/08 dated 22.02.2011, has informed the 2nd respondent that the proposals for the petitioner's appointment as Junior Assistant was sent very belatedly i.e., after 25 years of service and therefore returned the proposals as cannot be approved. Though the management explained reasons for the delay in sending the proposals, the 2nd respondent did not consider the same. The petitioner retired from service on 04.10.2014 as Junior Assistant. The petitioner sent representations to the 1st respondent on 04.07.2016 and 06.11.2017 to approve his appointment and approve for pension benefits. However, the 1st respondent in his letter R.C.No.40023/IS2/2018 dated 21.12.2018 rejected his plea stating that till the retirement date, the petitioner was worked as Management staff and as per pension rule, pension is sanctioned only to the approved staff, who served in the regular time scale. Hence, sanction of pension to unapproved staff to the petitioner is not possible. Aggrieved by the same, the petitioner has filed the present petition with the aforesaid prayer.

3.Heard Mr.A.R.Nixon, learned counsel appearing for the petitioner and Mrs.A.Sri Jayanthi, learned Additional Government Pleader, appearing for the respondents.

4.The learned counsel for the petitioner would submit that after service 31 years of service, the petitioner was not approved to get pension and other allied benefits only due to the negligence of the management in sending the proposal belatedly. Accordingly, he prays to allow this petition.

5.Per, learned Additional Government Pleader would submit that though the petitioner has sent representation on 04.07.2016 and 06.11.2017, the 1st respondent in his reply letter dated 21.12.2018 has clearly stated that till the retirement date, the petitioner was worked as Management staff. As per pension rules, pension is sanctioned only to the approved staff, who served in the regular time scale. Therefore, sanction of pension to unapproved staff viz., the petitioner is not possible. She further submitted that the petitioner without challenging that impugned letter, where appeal remedy is available, approaching this court is inappropriate. Accordingly, he prays for dismissal of the writ petition.

6.Considering the submissions made, this Court is of the view that the petitioner should have challenged the reply letter from the 1st respondent dated 21.12.2018 and also the reply letter received through RTI dated 16.04.2019, before the appropriate forum. Without exhausting appeal remedy, the petitioner has approached this court by way of writ petition is unsustainable one. Accordingly, the writ petition stands dismissed. However, liberty is granted to petitioner to work out his remedy in the manner known to law. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Commissioner
Directorate of Employment and Training, Guindy
Chennai - 600 032.

2. The Accountant General (A & E)
Accountant General Office,
No.361, Anna Salai,
Teynampet, Chennai - 600 018.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.77160
+1cc to the Government Pleader, S.R.No.77753

W.P.No.26575 of 2019

CS/09/10/2019