



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:04.04.2019
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.257 of 2016

WEB COPY

S.Dhanam

... Petitioner

vs.

1.The District Educational Officer,
Tallakulam,
Madurai District.

2.The State Accountant General,
Office of the Principal Accountant General (A&E),
No.361, Anna Salai, Chennai ... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to pass appropriate order as forwarded by the first respondent dated 26.03.2013 and 8.11.2013 by including the petitioner's service period from 19.11.1987 to 08.03.1989 and pay the revised pensionary benefits from the date of petitioner's superannuation as sought in the representation dated 29.08.2015 to the respondents.

For Petitioner :Mr.S.Natarajan

For Respondents : Mr.S.Angappan
Government Advocate
for R1
: Mr.P.Gunasekaran
for R2

ORDER

The Writ Petition is filed seeking a direction to the second respondent to pass appropriate orders, by including the petitioner's service period from 19.11.1987 to 08.03.1989 and pay the revised pensionary benefits from the date of petitioner's superannuation, as forwarded by the first respondent dated 26.03.2013 and 8.11.2013 and by considering the representation dated 29.08.2015.

2. Heard the learned Counsel appearing for the petitioner, the learned Government Advocate appearing for the first respondent and the learned Counsel appearing for the second respondent and perused the materials available on record.

3. The learned Counsel appearing for the petitioner submitted that the petitioner joined as Secondary Grade Teacher on 19.11.1987.



Subsequently, she was appointed as Tamil Pandit on regular basis on 22.02.1989. After completing her service, the petitioner retired on 31.05.2013. According to the petitioner, the second respondent refused to include the period from 19.11.1987 to 08.03.1989 for pension, though the first respondent forwarded the proposal including the said period. In this regard, the petitioner made a representation on 29.08.2015 to the second respondent. However, the same has not been considered so far. Hence, the petitioner has approached this Court by filing this writ petition.

4. In support of his contention, the learned Counsel for the petitioner has drawn the attention of this Court to the decision rendered by this Court in K.V.Vanaja Vs. Secretary to Government, Chennai and Others reported in (2013)3 MLJ 895, wherein this Court held as follows:

3. It is seen that the third respondent is only an authority to implement the order of Respondents 1 and 2. In other words, the question as to whether the appellant is entitled for pension either under the Scheme or as per the Government Order has to be decided by respondents 1 and 2 and not by the third respondent. Even though the learned counsel appearing for the appellant has made submissions on the entitlement to get pension, which has been passed by the learned counsel appearing for the third respondent, considering the facts and circumstances of the case, we deem it fit to direct the appellant to approach respondents 1 and 2 being the competent authorities to consider the grant of pension. Admittedly, respondents 1 and 2 have not taken any stand on the entitlement of the appellant by way of passing appropriate orders. Further more, the order impugned has been passed only by the third respondent and that too, on the ground that Rule 23 of the Tamil Nadu Pension Rules, 1978 prohibits the consideration of the case of the appellant. Therefore, the question as to whether the resignation of the appellant would amount to voluntary retirement and the further question as to whether the said resignation is due to ill-health being question of fact, will have to be considered only by respondents 1 and 2.

4. In such view of the matter, this writ appeal is disposed of, permitting the appellant to make a representation to respondents 1 and 2 within a period of four weeks from the date of receipt of a copy of this order seeking grant of pension. As and when such representation is received, the first respondent, being the competent authority, will have to pass appropriate orders on merits and in accordance with law within a period of eight weeks thereafter. We also make it clear that the said representation will have to be considered without being influenced by any of the observations made by the learned single Judge.



5. In view of the above, the learned Counsel for the petitioner seeks appropriate direction to the respondents to consider the petitioner's representation, for which, the learned Government Advocate appearing for the first respondent and the learned Counsel appearing for the second respondent have no serious objection.

6. Considering the facts and circumstances of the case and in regard to the submissions of the learned Counsel on both sides, the second respondent is directed to consider the representation of the petitioner dated 29.08.2015, if not already considered and pass appropriate orders on merits as well as in the light of the order passed by this Court in K.V.Vanaja Vs. Secretary to Government, Chennai and Others reported in (2013)3 MLJ 895 (cited supra), after affording an opportunity of hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

7. The Writ Petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1.The District Educational Officer,
Tallakulam,
Madurai District.

2.The State Accountant General,
Office of the Principal Accountant General (A&E),
No.361, Anna Salai, Chennai.

+1 CC to M/s.S.NATARAJAN, Advocate (SR-59181[F] dated 05/04/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-59691[F] dated
08/04/2019)

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04.04.2019

SP:03/05/2019/4P/5C