

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.4271 of 2020

V.Chandra

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
4. The District Educational Officer,
Paramakudi Educational District,
Ramanathapuram District. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to pass appropriate orders on the proposals forwarded by the 3rd respondent in Na.Ka.No.4793Aa5/2016 dated 07.11.2019 and the 2nd respondent in O.Mu.No.12380/C2/E1/2019 dated 28.03.2019 and to grant retirement benefits to the petitioner's husband R.M.Viswanathan (late) till the date of his death on 11.03.2019 and other retirement benefits and Family Pension to the Petitioner as permissible under law, within a time frame to be fixed by this Court.

For Petitioner : Mr.K.H.Ravikumar

For Respondents : Mr.S.Suresh Kumar
Government Advocate

O R D E R

This writ petition has been filed for issuance of a writ of mandamus directing the 1st and 2nd respondents to pass appropriate orders based on the proposals that have already been forwarded by the 3rd respondent by his proceedings dated 07.11.2019.

2.The case of the petitioner is that the husband of the petitioner was appointed as a B.T. Assistant in the year 1972. Thereafter, he was posted at Tirupattur in the year 1979 and subsequently at Ramanathapuram District in the year 1982. While he was working at Ramanathapuram, he suffered with some health problems and he went on leave. After recovery, he reported for duty, but, he was informed that another teacher has been posted in his place.

3.The husband of the petitioner immediately approached the CEO and even thereafter, he was not posted in any place on the ground that his leave has not been sanctioned. The husband of the petitioner sent several representations to the department seeking for posting order. However, till his retirement, he was not given any posting order. He ultimately died on 11.03.2019.

4.The further case of the petitioner is that, in the meantime, the 3rd respondent forwarded a proposal to the 2nd respondent by his proceedings dated 01.11.2018 for granting retirement benefits. Thereafter, the 2nd respondent in turn forwarded the proposal to the 1st respondent on 08.03.2019 along with all the service details and with recommendation that entire service from 1982 to 2005 must be regularized and retirement benefits can be granted. The 1st respondent issued a communication on 14.03.2019 to the 2nd respondent, seeking for revised proposal with all details. The file again came to the 3rd respondent and the 3rd respondent by his proceedings dated 07.11.2019 had provided the details on 07.11.2019. In the meantime, the husband of the petitioner also died.

5.After the proposal was forwarded by the 3rd respondent to the 1st and 2nd respondents on 07.11.2019, the same is pending and since no orders were passed, the present writ petition has been filed before this Court seeking for appropriate directions.

6.Mr.K.H.Ravi Kumar, learned counsel appearing on behalf of the petitioner submitted that the issue that is involved in the present writ petition is covered by the judgment of the Division Bench of this Court in W.A.No.2688 of 2018 dated 30.11.2018. This judgment is relied upon by the learned counsel in order to substantiate the fact that even if ultimately the respondents

find that the husband of the petitioner has put in only with 9 years and 9 months service, in terms of Rule 43(2) of the Tamil Nadu Pension Rules, 1978 it can be rounded off to 10 years. The relevant portions in the judgment are extracted hereunder:

22. In State of Tamil Nadu vs. K.Thiruvanam Pillai on 20.10.2014 in W.A. No.906 of 2013, a Hon'ble Division Bench of this Court held as follows:

5. Rule 43 (2) (a) (3) of the Tamil Nadu Pension Rules, 1978 states that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as completed one half year and reckoned as qualifying service. In this case, the respondent's pensionable service comes to 9 years 6 months and 23 days. If 3 months period is taken as half years, 6 months should be treated as full year.

6. Similar issue was considered by this Court in W.P.No.4071 of 2008, dated 11.9.2012 by following the judgment of this Court in Writ Appeal No.27 of 2012, dated 13.2.2012, which was affirmed by the Honourable Supreme Court in SLP.No.16119 of 2012, by order dated 10.5.2012.

7. Insofar as the Central Government employees are concerned, similar issue arose with respect to the calculation of 10 years of service under Rule 49 (3) of CCS Pension Rules, 1972 before a Division Bench of this Court in W.P.No.45465 of 2002, dated 4.10.2007. Even though a person was having a regular service of 9 years 3 months and 23 days, considering the E.D. Staff service of 29 years, this Court directed grant of pension treating that the person as completed 10 years of qualifying service. The said judgment was challenged before the Honourable Supreme Court in SLP.No.13829 of 2008, which was also dismissed on 17.10.2008 and the said judgment was implemented by order dated 9.10.2009.

8. Again in W.P.No.22496 of 2009, dated 14.2.2013, a similar issue was considered and relief was granted, even though the said person was not having 10 years of pensionable service. The Division Bench of Karnataka High Court in W.P.No.72872 of 2012, dated 25.3.2013 also passed a similar order. The above said orders have been followed by the Division Bench of this Court (of which one of us NPVJ was a member) in W.P.No.29896 of 2013 by order dated 6.12.2013. The said order was also confirmed by the Honourable Supreme Court.

9. Similar issue was considered by the Honourable Supreme Court in respect of an employee of the State Bank of Patiala with reference to Chapter IV Regulations 14 and 18 of the State Bank of Patiala (Employees) Pension Regulations, 1995 in the decision reported in (2014) 3 LLN 17 (SC) (State Bank of Patiala Vs. Pritam Singh Bedi & Others), wherein the Supreme Court held that if there is a regulation to count six months and more period as one completed year as pensionable service and the employee concerned having minimum pensionable service, he is entitled to get pension.

10. Considering the said judgments and having regard to the fact that the total pensionable service as per the calculation of the department in this case itself comes to 9 years 6 months and 23 days, the said period should be taken as 10 years pensionable service for the purpose of grant of pension. The said 9 years 6 months and 23 days is calculated as per the particulars given by the Officer of the Animal Husbandry Department as stated supra.

11. The Veterinary Doctor/Assistant Director, Melur, has addressed a letter on 27.9.2007 to the Regional Deputy Director, Animal Husbandry, Madurai-20, wherein also it is stated that the respondent had served continuously from 1.1.1981 to 16.7.1997.

12. Considering the fact that the respondent has retired from service on 31.10.1998, the appellants are bound to sanction pension from 1.11.1998. The respondent is not entitled to get any interest from 1.11.1998, as his eligibility is settled only now.

13. In fine, the writ appeal is partly allowed with a direction to the appellants to sanction and pay pension and other retirement benefits to the respondent treating that he had completed 10 years of pensionable service as on 31.10.1998. The appellants are also directed to pay the arrears of pension from 1.11.1998, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

23. In Secretary to Government vs. S.Kamachi on 09.04.2015 in W.A. No.523 of 2015, a Hon'ble Division Bench of this court held as follows:

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.

8. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

24. In the case on hand, the first respondent herein/writ petitioner has completed 9 years, 9 months and 3 days. Thus in terms of Rule 43(3) of the Tamil

Nadu Pension Rules, 1978, the first respondent herein/writ petitioner is eligible for computing the period as one full year and accordingly, it has to be construed that the petitioner had completed 10 years service, for the purpose of grant of pension under Tamil Nadu Pension Rules, 1978.

25. In view of the above decisions and discussions, we do not find any manifest error or illegality in the order of the writ court, directing the appellants herein to grant pension to the first respondent herein/writ petitioner by treating the period of qualifying services as 10 years under the provisions of the Tamil Nadu Pension Rules, as stated supra and accordingly calculate the pensionary benefits and disburse the same, with arrears as applicable as per rules.

7. In view of the above, there shall be a direction to the 1st and 2nd respondents to immediately consider the proposals that has already been forwarded by the 3rd respondent on 07.11.2019 and pass appropriate orders strictly in accordance with law, within a period of six weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the 1st and 2nd respondent along with a copy of the proposals of the 3rd respondent dated 07.11.2019 and a copy of this order.

8. This writ petition is disposed of with the above directions. No Costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ssr

To

1. The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

WEB COPY

2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

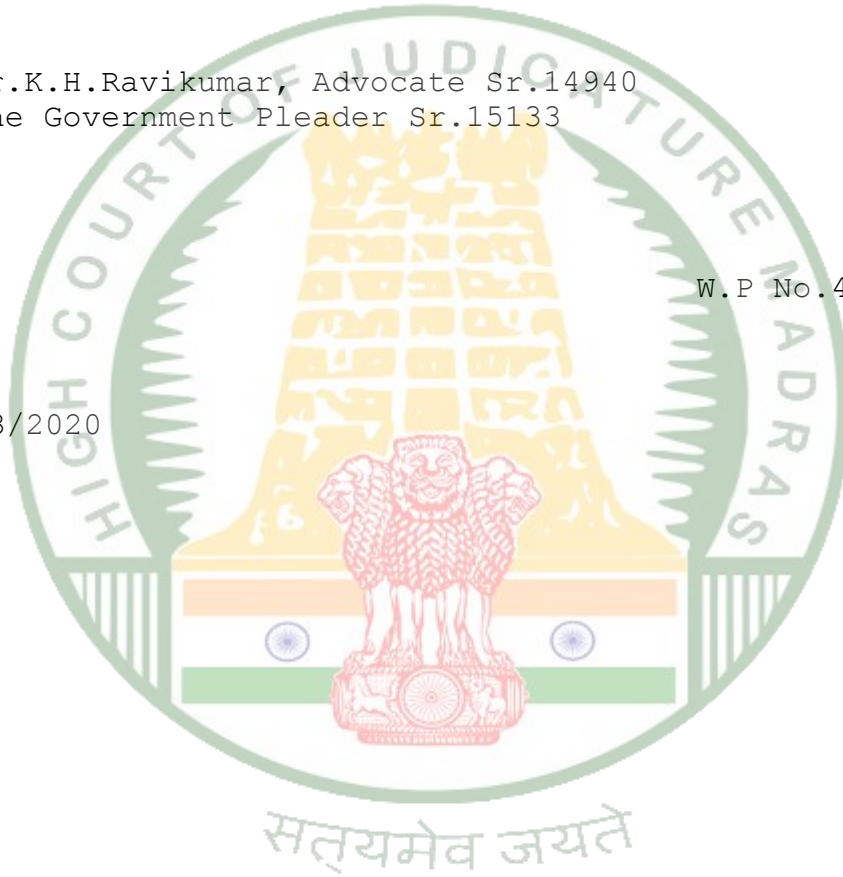
3. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

4. The District Educational Officer,
Paramakudi Educational District,
Ramanathapuram District.

+1cc to Mr.K.H.Ravikumar, Advocate Sr.14940
+1cc to the Government Pleader Sr.15133

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