

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.33944 of 2013

K.C.Sadasivam

... Petitioner

Vs

1.The Secretary to Government,  
School Education Department,  
Fort St. George,  
Chennai -9.

2.The Director of School Education,  
College Road,  
Chennai -6.

3.The Chief Educational Officer,  
Salem District  
Salem.

4.The District Educational Officer,  
Salem.

5.The Correspondent,  
Bharathi Vidyalaya Higher Secondary School,  
Salem-636007.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed by the first respondent in Letter NO.1806/D2/11-1 dated 23.02.2011 and confirmed in Letter No.19565/D2/2012-1 dated 06.06.2012 and quash the same and consequently direct the first respondent to sanction pensionary benefits.

For Petitioner : Mr.S.Kamadevan  
For Respondents 1 to 4 : Mr.S.Sureshkumar, GA

## ORDER

The application submitted by the petitioner for pension was rejected by the fifth respondent primarily on the ground that his resignation was subsequent to the cut-off date.

2. The brief facts of the case is that the petitioner was appointed as Attender, a non-teaching staff, on 01.07.1963 in the fifth respondent school and subsequently the said post was redesignated as Record Clerk by the 5<sup>th</sup> respondent school in the year 01.07.1969 and his services were regularised. Due to frequent illness, for which the petitioner was under treatment, the petitioner was not able to work after 22.07.1978. The petitioner has rejoined duty on 27.06.1980, and due to health reasons he submitted a letter for settling PF amount, to the fourth respondent through proper channel. The resignation was accepted by the fourth respondent in his proceedings dated 08.08.1980 and recommended closure of PF account. The petitioner was in continuous service for 15 years.

3. The Government issued G.O.Ms.No.1015, Education Department, dated 5<sup>th</sup> June, 1981, providing for pension to the non-teaching staff of Aided Educational Institutions. Since the petitioner had worked in the 5<sup>th</sup> respondent School and relieved from the post on 22.07.1978, and as he has completed 15 years of service, he is also entitled to pensionary benefits.

4. The petitioner made a representation to the 4<sup>th</sup> respondent on 23.10.1999, requesting to submit proposals for sanction of pensionary benefits as he had completed more than 15 years of service as on 22.07. 1978. On 23.05.2006 the 4<sup>th</sup> respondent sent a report to the District Collector, Salem, stating that the 5<sup>th</sup> respondent school reported that as he had resigned the job and, therefore, not entitled to get pension. Thereafter the petitioner made another representation to the 1<sup>st</sup> respondent to sanction pension. Since there was no action, the petitioner earlier filed W.P.No.29929 of 2008, which was disposed of by order dated 2.2.10 directing the Secretary to Government, School Education Department, Chennai, to consider the petitioner's representation dated 22.10.2006 and pass appropriate orders. The 1<sup>st</sup> respondent passed orders citing that since the petitioner had resigned from service he is not entitled to get pension as per the pension rules and rejected the claim of the petitioner. Aggrieved by the said order, the present petition has been filed.

5. Learned counsel appearing for the petitioner reiterated the contentions raised in the grounds filed in support of the

petition and submitted that the Government Order passed is equally enforceable in the case of the petitioner. It is also submitted that the said Government Order was put to test before this Court in W.P.(MD) No.915 of 2013 and this Court had upheld the validity of the order and extended the benefit of pension to the persons mentioned in the Government Order. The petitioner being similarly situated, is also entitled for pension.

6.Learned Special Government Pleader, appearing for the respondents, while reiterating the points raised in the counter contended that no such representation was received by the 2<sup>nd</sup> respondent. Even other wise, 20 years had lapsed since the petitioner leaving his employment and he has not even submitted copies of his alleged petitions dated 23.08.2011. As per letter dated 16.08.2004 received from the 5<sup>th</sup> respondent, it has been reported that the petitioner had resigned his job resignation and, his PF account had also been closed and, therefore, he is not entitled for pension. It is further averred that the application was rightly rejected by the 1<sup>st</sup> respondent. It is further averred that the claim has been made after a period of 25 years and the delay is fatal to the case of the petitioner.

7.learned Special Government Pleader further submits that the petitioner absented himself away from work for a long period and, thereafter, submitted his letter of resignation nearly after two years. Further, two decades have passed since the petitioner leaving the employment and that the correspondent of the school had also reported that the petitioner has submitted his resignation and, therefore, the petitioner, in the above circumstances, is not entitled for any pensionary benefits as sought for.

8.This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

9. The facts in issue are not in dispute. The petitioner is a non-teaching staff and he resigned from the job due to personal reasons. The materials available on record further reveal that the petitioner moved this Court on an earlier occasion and obtained an order to consider his representation for payment of pension, which was disposed of directing the respondents to consider the representation of the petitioner in accordance with law. However, a careful perusal of the order impugned herein reveals that the representation of the petition was dismissed without assigning any cogent and convincing reason whatsoever. In essence, the order passed by this Court in the

earlier round of litigation has not been adhered to in letter and spirit. Due to the said action of the respondents in rejecting the representation, the petitioner is before this Court by filing the present petition.

10. The facts in issue are not in dispute so also the various Government Orders, on which reliance has been placed by the petitioner. It is also not in dispute that G.O. Ms No.37, Education Department, dated 5.1.1983 was the subject matter of a appeal before the Division Bench of this Court in the case of Government of Tamil Nadu & Anr. vs. S.V.Paul Jayaraj [2001(3) MLJ 430]. The Division Bench considered the Government order in G.O.Ms.No.37, Education Department, dated 5.1.1983, and held that a non-teaching staff, who has resigned even after the crucial date, can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government. The relevant portion of the order reads as under :-

"7. It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in favour of the respondent teacher and we find that the learned Single Judge has also relied on the aforementioned Government order, G.O.Ms.No.37. This is apart from the fact that even the language of the Government Order dated 5.6.1981 and more particularly of paragraph 6 (ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving a concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms.No.37 is more than clear. Therefore, we confirm the judgment of the learned Single Judge. We are told that there is a stay in the matter. We direct the Government to finalise the pension of the respondent teacher within three months from today."

11. The petitioner has placed reliance on a similar order passed by this Court in S.Ayyavoo Vs. The District Elementary Educational Officer and others in WP.(MD) No.915 of 2013. In the said case, the said employee worked from 19 July, 1949 to 20 October , 1964. He resigned from service, after the crucial date of introduction of pension. On the directions issued by

this Court, the Government considered the case of the said individual issue and sanctioned pension and the petitioner also being similarly placed, is entitled to similar treatment.

12. G.O. Ms. No.37, Education Department, dated 05 January, 1983, is the basis for provision of pension to persons in the non-teaching cadre. Clause No.4 of the said Government Order, which is relevant for deciding the case, provides the following :

"4. Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particular individuals relaxed the stipulations and allowed retirement benefits to "resigned" teachers also."

13. A reading of the above Government Order, more particularly clause (4), extracted above, reveal that even such of those persons, who have resigned from service after the crucial date are entitled to pension. It is also to be mentioned here that similar issue was the subject matter of consideration before the Division Bench of this Court in State of Tamil Nadu - Vs - S.V. Paul Jayaraj (2001 (3) MLJ 430), wherein the Division Bench categorically held in para-6 of the said judgment, particularly referring to G.O. No.37 that such of those non-teaching staff, who resigned before the crucial date, were also entitled to receive pension. The said view was followed in the case of WP.(MD).No.915/2013 order dated 19.09.2014.

14. Such being the factual position, both on law and facts, this Court is of the considered view that the prayer sought for by the petitioner deserves to be sustained. The petitioner is entitled to pension both in terms of G.O. Ms. No.37 as also the orders of this Court supra, which has upheld the entitlement of the persons, such as the petitioner, to receive pension.

15. For the reasons aforesaid, the writ petition deserves to be allowed and, accordingly, the same is allowed. The respondents are directed to calculate the pension payable to the petitioner and pay the pension every month and also settle the arrears of pension within a period of three months from the date of receipt of a copy of the order. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

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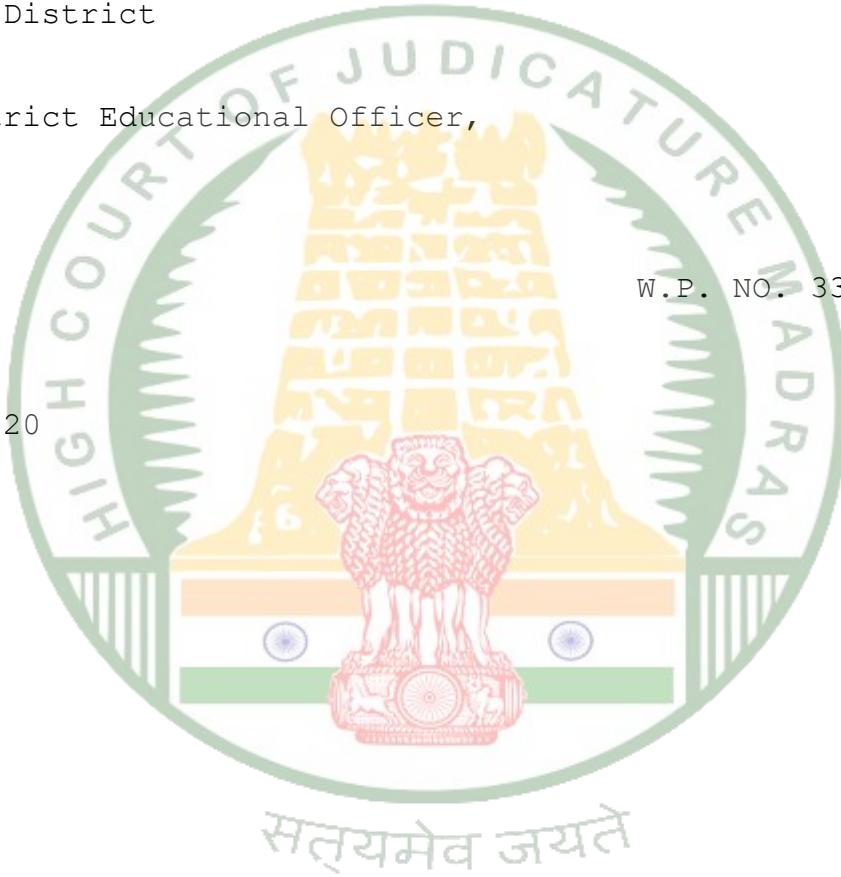
Sub-Assistant Registrar

To

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