

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.23617 of 2019

A.Leema

... Petitioner

Vs.

1. The Accountant General (A&E)
No.361, Anna Salai,
Teynampet, Chennai 600 018.
 2. The State of Tamil Nadu
Rep. By its Secretary to Govt.
School Education Department,
Fort St. George, Secretariat,
Chennai 600 009.
 3. The Director of School Education,
Chennai 600 006.
 4. The Chief Educational Officer,
Trichy, Trichy District.
 5. The District Educational Officer,
Trichy, Trichy District.
 6. The Correspondent / Headmistress
Infant Jesus Girls Higher Secondary School,
Thuvakudimalai, Kailasapuram,
Tiruchirappalli - 620 022.
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed in No.P23/5/12323528/ADK dated 21.06.2019 of the first respondent and quash the same and directing the respondents to count the petitioner's service rendered at Our Lady of Bon Secours Girls High School, Bangalore and sanction pension for the services rendered for 24 years 8 months and 5 days and confer all consequential benefits.

For Petitioner : Mr.C.Selvaraj, Senior Counsel
for M/s.C.S.Associates

For Respondents : Mrs.Hema Muralikrishnan for R1

Mrs.V.Annalakshmi
Government Advocate for R2 to R5

O R D E R

This Writ Petition has been filed challenging the order passed by the first respondent rejecting the request made by the petitioner to count the services of the petitioner at Lady of Bon Secours Girls High School, Bangalore.

2. The case of the petitioner is that she was appointed as a B.T.Assistant (Maths) in St.Antony's Girls Higher Secondary School, Chennai, in the year 1991. This School is one among the various Schools that is being run by a common Management and the teachers are transferred as between the Schools under the same Management. The petitioner, who was appointed in 1991, was transferred to Mannargudi and she was working there till 1993. The petitioner was thereafter transferred to Our Lady of Bon Secours Girls High School, Bangalore on 09.06.1993. This School is also coming under the same Management. The petitioner worked in the said School till the year 1996. Thereafter, she was transferred to St.Joseph's Girls Higher Secondary School, Mannargudi on 06.06.1996. The petitioner thereafter was transferred to the other Schools within Tamil Nadu. Ultimately, the petitioner retired from service on 31.08.2016. Since the retirement fell within academic year, her services were extended till the end of the academic year up to 31.05.2017.

3. The grievance of the petitioner is that she had totally put in service of 24 years 5 months and 8 days. However, the three year period when she served in Bangalore was not added in her total service and the pension was sanctioned only for 21 years.

4. The petitioner made a representation to the respondents to count the three years of service rendered by her at

Bangalore. Since the same did not invoke any response, the petitioner approached this Court and filed WP No.1477 of 2019 seeking for appropriate directions. This Court after considering the facts and circumstances of the case, by an order dated 22.01.2019 directed the respondents to consider the representation of the petitioner in the light of G.O.Ms.No.619, dated 29.03.1983 and pass orders within a period of eight weeks.

Pursuant to the orders passed by this Court, the first respondent has passed the impugned order rejecting the claim made by the petitioner only on the ground that the petitioner during the relevant point of time was in service in an Educational establishment in another State. This order has now been put to challenge in the present Writ Petition.

5. Mr.C.Selvaraj, learned Senior Counsel appearing for M/s.C.S.Associates, on behalf of the petitioner, submitted that in this case all the Schools came under the same Management and the Teachers were appointed in sanctioned posts. The teachers were transferred within the Schools which were under the control of the same Management and thereby the petitioner was also transferred for a period of three years to a School at Bangalore. The learned Senior Counsel submitted that the first respondent failed to notice the fact that by working at Bangalore for a period of three years, the petitioner cannot be deprived of the service put in by her at Bangalore, since the employment continued with the same Management for the entire tenure of 24 years 5 months and 8 days.

6. The learned Senior Counsel also brought to the notice of this Court G.O.Ms.No.619, dated 29.03.1983. The relevant portion in the Government Order is extracted hereunder:

"Sister Mary Virginia has been working as Headmistress in various educational institutions under the management of the Bon Secours Convent till 21.06.77. She was serving in Tamil Nadu and as on that date, she was Headmistress in St.Joseph's Girls' High School, Mannargudi, drawing a pay of Rs.685/- in the scale of pay of Rs.500-25-625-30-745-35-850. With effect from 22.06.77, she was transferred by the management to serve as Headmistress in our Lady of Bon Secours High School, Bangalore where she served till 3.6.80. Again with effect from 4.06.80. She was transferred to serve as Headmistress in St. Theresa's Girls' Higher Secondary School, Thiruthiraipoondi. She is presently working as

Headmistress in St. Anthony's Girls' Higher Secondary School, Madras. Her increment date while she was in Tamilnadu service was the first day of July. Since she was serving in Karnataka during the period from 22.6.77 to 3.6.80 and joined the Tamilnadu service only on 4.6.80 her pay was fixed at Rs.900/- in the selection Grade (Scale of pay Rs.750-50-1350) only with effect from 4.6.80 and next increment was allowed with effect from 1.4.81. Sr. Mary Virginia has now requested the Government to allow her to draw her increment with effect from 1.7.80 as hitherto she was drawing her increment on the first of July.

2. Since the teacher was serving under the same management with liability to be transferred to the Schools in the neighbouring states, the Director of School Education, Madras has recommended that the previous services, including those in Karnataka, rendered by Sr. Mary Virginia might be taken into account for purposes of fixation of her pay as Headmistress in the selection Grade and that her pay might be fixed in the selection Grade scale with effect from 4.6.80.

3. The Government accept the recommendation of the Director of School Education, Madras and direct that Sr. Mary Virginia Headmistress, St. Anthony's Girls' Higher Secondary School, Madras be allowed to count her past services, including those in Karnataka State, for purposes of refixation of her pay on 4.6.80 and that she be allowed to draw pay in the entire arrears of pay consequent on such refixation.

4. The T.S.R. (four Volumes) of the teacher are returned herewith. The Director of School Education, Madras is requested to acknowledge their receipt.

5. This order issues with the concurrence of the Finance Department vide its U.O.No.8103/Edn./83, dated 2.2.1983."

7. The learned Senior Counsel by placing reliance upon the above Government Order submitted that a teacher who was similarly placed like the petitioner was extended the benefit and her service rendered at a School in Karnataka, under the same management was added to the total service of the teacher

and she was given all the benefits. The learned Senior Counsel submitted that the petitioner should be treated in the same manner and the petitioner cannot be discriminated.

8. Mrs.Hema Muralikrishnan, learned counsel appearing on behalf of the first respondent and Mrs. V.Annalakshmi, learned Government Advocate appearing on behalf of respondents 2 to 6, submitted that during the three year period from 1993 to 1996, the petitioner was working as a Teacher at a School in Bangalore and this Educational establishment came under the purview of the laws as was in force in Bangalore. The learned counsel therefore, submitted that this period cannot be added into the total service of the petitioner and only the service rendered by the petitioner within Tamil Nadu will be reckoned for the purpose of determining the pension eligibility of the petitioner.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. There are no serious disputes with regard to the facts in this case. The petitioner was working under a common management which was running several Schools in Tamil Nadu and Karnataka. The teachers were appointed after getting sanction from the appropriate Authorities in both the States. Since the Schools fell under the same Management, the teachers were transferred within the Schools falling under the Management and consequently, the petitioner was also transferred to a School at Bangalore for the period from 1993 to 1996. All the other transfers of the petitioner had taken place within Tamil Nadu. The only issue that has been raised against the petitioner is that the period of three years that was served by the petitioner at Bangalore cannot be taken into consideration, since it was an Educational establishment in another State.

11. It is important to note that this is not a peculiar case that has arisen for the first time. It is seen from G.O.Ms.No.619, dated 29.03.1983 that there was yet another case of similar nature where the teacher, who was working in Tamil Nadu was transferred to Bangalore to a School which came under the same Management. The period during which the said teacher was functioning at Bangalore, was not reckoned towards the total service on the ground that she was working at an Educational establishment in another State. The teacher had made a representation and the Authorities had also got the concurrence

from the concerned School and the same was placed before the Government. The Government after considering the entire case had permitted the addition of period of service rendered by the concerned teacher at Bangalore. For this purpose the Government order was also passed in G.O.Ms.No.619, dated 29.03.1983. The Government had further directed that the concerned Teacher's pay should also be re-fixed and the arrears must be paid to her.

12. The decision taken by the Government of Tamil Nadu with regard to the concerned teacher, will be equally applicable to the petitioner also. The Government was correct in coming to such a conclusion, since the total service of the teacher must be reckoned by taking into consideration the service that was put in by the teacher in all the Schools falling under the same Management. It will be arbitrary and illegal, if the service put in at the Bangalore School is taken away from the total period of service rendered by the petitioner. It is not as if every time the petitioner is transferred to a new School, a fresh period of service begins. Irrespective of the number of Schools to which the petitioner is transferred, what is important to reckon is the entire service that was rendered by the petitioner under the same Management. In the considered view of this Court, the petitioner must also be treated in the same manner in which another teacher was given benefits under G.O.Ms.No.619, dated 29.03.1983.

13. When this Court passed the order in WP No.1477 of 2019, this Court had clearly directed the respondents to pass orders in the light of G.O.Ms.No.619, dated 29.03.1983. Unfortunately, the respondents have not taken into consideration this Government order and it has not even been referred in the impugned order. The request has been mechanically rejected without any application of mind. Therefore, the impugned order passed by the first respondent requires interference of this Court.

14. In view of the above discussion, the impugned order passed by the first respondent dated 21.06.2019 is hereby quashed. The respondents are directed to count the service of the petitioner rendered at Our Lady of Bon Secours Girls High School, Bangalore, during the period from 1993 to 1996 and add the same in her total period of service and sanction pension with all other consequential benefits. This exercise shall be completed within a period of 8 weeks from the date of receipt of copy of this order.

15. In the result, this Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jv

To

1. The Accountant General (A&E)
No.361, Anna Salai,
Teynampet, Chennai 600 018.
2. The Secretary to Govt,
The State of Tamil Nadu,
School Education Department,
Fort St. George, Secretariat,
Chennai 600 009.
3. The Director of School Education,
Chennai 600 006.
4. The Chief Educational Officer,
Trichy, Trichy District.
5. The District Educational Officer,
Trichy, Trichy District.

+lcc to Mrs.Hema Muralikrishnan, Advocate sr.2004
+lcc to M/s.C.S.Associates, Advocate sr.2046
+lcc to Government Pleader SR.NO. 2220

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