

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.01.2020
CORAM
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P.No.32944 of 2019
and
W.M.P. No. 33373 of 2019

K.Sriram

... Petitioner

Vs

1.The Central Board of Secretary to Education,
Rep. by its Secretary,
PS-1-2-Institutional Area I.P. Extn.,
Patparangai, Delhi - 110 092.
Having its Regional Office at
Plot No.1630 A, "J" Block,
16th Main Road,
Chennai - 600 040.

2.The Director,
Ordinance Factory Board,
Esplanade East,
Kolkata - 700 069.

3.The General Manager,
Heavy Vehicle Factory,
Avadi,
Chennai - 600 054.

4.The Chairman,
HVF English Medium Educational Society,
Vijayanta Senior Secondary School,
H.V.F. Estate, Avadi,
Chennai - 600 054.

5.The Secretary,
HVF English Medium Education Society,
Vijayanta Senior Secondary School,
H.V.F. Estate Avadi,
Chennai - 600 054.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records on the file of the fourth respondent in proceedings No.VSSS/GENL./27/2019 dated 02.11.2019 and to quash the same as illegal, incompetent and without jurisdiction and forbear the respondents from retiring the petitioner before the end of the academic year 2019-2020 and direct the respondents to continue the petitioner in service till the completion academic year of 2021 to 2022.

For Petitioner : Mrs.P.D.Theyzovathi
For Respondents 2&3 : Mr.V.Chandrasekaran

O R D E R

This Writ Petition has been filed challenging the proceedings of the fourth respondent dated 02.11.2019 and for consequential direction to continue with the service of the petitioner till he completes sixty years during the academic year 2021 - 2022.

2. The case of the petitioner is that the fifth respondent school is affiliated to the Central Board of Secondary Education, New Delhi. The Bye Laws of Central Board of Secondary Education clearly provides the age of retirement of the teaching staff as sixty years. The petitioner who is working as teacher in the fifth respondent school is sought to be superannuated on completion of fifty eight years on 31.01.2020 and aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Learned counsel for the petitioner submitted that the issue that is involved in this case is squarely covered by an earlier order of this Court for a teacher who also was working in the fifth respondent School. Learned counsel submitted that in view of this judgment, the petitioner must be permitted to continue in the fifth respondent school till he attains the age of sixty years.

4. Heard Mrs.P.D.Theyzovathi, learned counsel appearing on behalf of the petitioner and Mr.V.Chandrasekaran, learned counsel appearing on behalf of the second and third respondents.

5. The issue that has been raised in this Writ Petition is squarely covered by the judgment that was cited by the learned counsel for the petitioner. The relevant portion of the judgment is extracted hereunder:

"... 12.This Court considered the rival submissions of the counsels and perused the materials and the decisions cited on behalf of the petitioner.

13.It is a fact that the 4 th respondent school is affiliated to the 1 st respondent viz., CBSE and the Bye Laws of the CBSE are applicable to the 4 th respondent school in which the petitioner was employed as a Teacher. In respect of the same school, two learned Judges of this Court have clearly held that the Teachers were entitled to serve the school till they attain the 60 years of age. Both the learned Judges have relied on Bye Laws 30 of the CBSE which governed the service conditions of the Teachers of the 4 th respondent school. Moreover, in the absence of a clear Bye Laws in regard to retirement age of the petitioner, as far as the 4 th respondent school is concerned, the Bye Laws of the CBSE is automatically made applicable with reference to the service conditions of the employees of the 4 th respondent school. When similarly placed Teachers have obtained orders from this Court holding that their age of retirement is only 60 years and in fact, they continued till the age of 60 years, this Court does not think that the present petitioner can be treated differently in the matter of retirement age. If any such different treatment is to be meted out that could be grossly violative of Articles 14 and 16 of the Constitution of India.

14.Even otherwise, if the amendment to the Bye Laws which came into effect 19.10.2018 is to be considered, as rightly relied on by the learned counsel for the petitioner in a decision of this Court reported in 2012 (4) CTC 577 (cited supra), such amendment prescribing a different condition of service can be made applicable only prospectively and the petitioner, who joined much before the amendment was brought in, cannot be allowed to suffer a new condition of service to her detriment. Admittedly, the petitioner was appointed as Teacher in 1988, 20 years before the amendment and

therefore, such amendment can at best be applied prospectively, when staff are appointed after the said date of appointment. Further, the fact of the 4 th respondent school affiliated with the 1 st respondent Board would mean that the Bye Laws of the Board would automatically apply including the service conditions of the employees and the Bye Laws of the 1 st respondent Board shall prevail over any local arrangement of the 4 th respondent school with its staff. In any case, the absence of any particular service conditions regarding age of retirement formulated by the 4 th respondent society has not been disputed except stating that the power is with the Managing Committee. Such general power vested with the Managing Committee does not empower the 4 th respondent school to retire its staff contrary to the specific Bye Laws of the 1 st respondent Board.

15. For the above said reason, this Court is of the considered view that the petitioner has made out a clear case for grant of relief as the claim of the petitioner is squarely covered by the decision cited by the learned counsel appearing for the petitioner and also on the basis of the Bye Laws of the 1 st respondent Board. In the said circumstances, the Writ Petition is allowed and a writ of mandamus is issued directing the respondents 4 and 5 to reinstate the petitioner in service as Teacher and continue her in service till she attains the age of 60 years and pay her all benefits as admissible. The respondents 4 and 5 are directed to pass appropriate orders in complying with a direction within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

The above judgment was passed in the case of a teacher who was also working in the fifth respondent school. The above judgment will squarely apply to the facts of the present case also and the petitioner is entitled to continue in the service of the fifth respondent school till he attains the age of sixty years.

6. In the result, the impugned order passed by the fourth respondent, dated 02.11.2019 is hereby quashed and there shall be a direction to the fourth and fifth respondents to continue the service of the petitioner till he attains the age of sixty years and pay him with all attendant benefits.

7. This Writ Petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bkn

To

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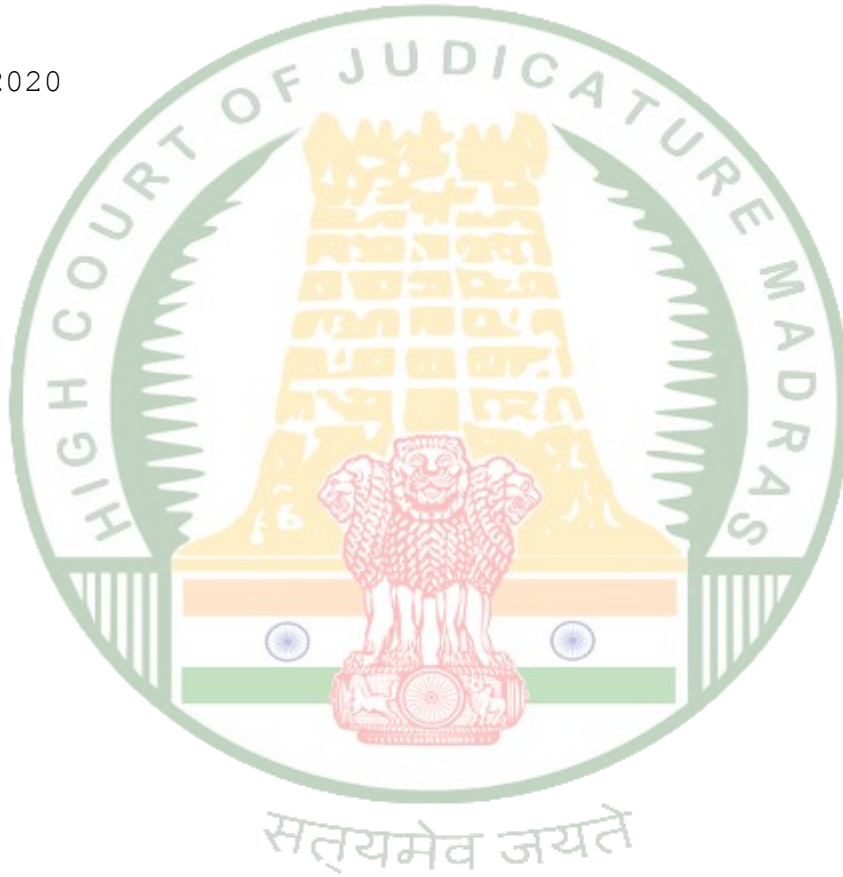
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5.The Secretary,
HVF English Medium Education Society,
Vijayanta Senior Secondary School,
H.V.F. Estate Avadi,
Chennai - 600 054.

+2cc to Mrs.P.D.Theyzovathi, Advocate sr.5891

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and
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sj (co)
nr 29/01/2020



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