



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P. (MD) No.749 of 2020

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S.Muthupetchi

... Petitioner

/vs./

1.The Accountant General of Tamilnadu,
Office of the Accountant General of Tamilnadu,
361, Anna Salai, Teynampet,
Chennai 600 018.

2.The Commissioner of Corporation,
Corporation of Madurai,
Madurai 625 002.

3.The Educational Officer,
Madurai Corporation,
Madurai 625 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to release the petitioner's pension based on the recommendation of the 3rd respondent to the 1st respondent in Na.Ka.No.A1/007915/15 dated 12.02.2016.

For Petitioner : Mr.T.Selvam
For R1 : Mr.P.Gunasekaran
For R2 & R3 : Mr.J.Gunaseelan Muthaiah
Additional Government Pleader

ORDER

This Writ Petition is filed to direct the first respondent to release the petitioner's pension based on the recommendation of the third respondent to the first respondent in Na.Ka.No.A1/007915/15 dated 12.02.2016.

2.The petitioner herein had also filed a writ petition in W.P. (MD) No.5771 of 2018 seeking for a direction to the Commissioner of Madurai Corporation to regularize her services and to direct the respondents therein to calculate the petitioner's date of retirement from her date of appointment and thereby, add the two years in the petitioner's services, which would entitle her to regularization for



the purpose of qualifying herself for pension.

3. When the said writ petition was taken up for hearing on 30.07.2019, the learned Standing Counsel appearing for the Corporation had produced the communication of the third respondent dated 28.01.2016 stating that the Accountant General of Tamilnadu, Chennai, had informed the petitioner that she has not completed the qualifying services and therefore, the request for granting pension was rejected. Since the said communication dated 28.01.2016 was not challenged by the petitioner, the aforesaid writ petition came to be dismissed as not maintainable through an order dated 30.07.2019.

4. The petitioner now relies upon the communication of the first respondent dated 12.02.2016 and thereby, seeks for issuance of Writ of Mandamus for releasing pension. The present writ petition is also not maintainable for the reason that when the petitioner had effectively sought for issuance of pension in the earlier writ petition and the present writ petition for the same relief would amount to *res judicata*.

5. The learned counsel appearing for the petitioner would submit that the prayer in the earlier writ petition in W.P (MD) No.5771 of 2018 and the prayer in the present writ petition are different and therefore, it would not amount to *res judicata*.

6. I am not in agreement with such statement. Though the wordings in the prayers in the writ petitions are coined differently, the nature of the prayer in this writ petition and the earlier writ petition is one and the same. The petitioner effectively sought for regularization and issuance of pension in the earlier writ petition and in the present writ petition, she seeks for releasing of pension and as such, the issue involved in both the writ petitions is with regard to the petitioner's entitlement to qualify herself for pension and therefore, the same would amount to re-agitating the issue once again. 7. Secondly, the petitioner would rely upon the recommendation of the first respondent dated 12.02.2016. Without going into the sanctity of such recommendation, this Court is of the view that since the alleged recommendation was available even at the time when the earlier writ petition was filed which the petitioner had not canvassed the same before this Court and when such grounds have not been raised which were already available at the time when the earlier writ petition was dismissed, the petitioner is precluded by raising the same in the present writ petition.

8. Accordingly, I do not find any merits in the present writ petition. Hence, the writ petition stands dismissed. However, if the petitioner is of the view that she would be entitled to qualify herself for pension, liberty is hereby granted to the petitioner to challenge the communication of the third respondent dated



28.01.2016. The petitioner is also at liberty to seek for a copy of such communication dated 28.01.2016 from the third respondent by way of filing an application under Right to Information Act. No costs.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Accountant General of Tamilnadu,
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Chennai 600 018.

2.The Commissioner of Corporation,
Corporation of Madurai, Madurai 625 002.

3.The Educational Officer,
Madurai Corporation,
Madurai 625 002.

+1 CC to M/s.J.GUNASEELAN MUTHIAH, Advocate (SR-5928[F]
+1 CC to M/s.T.SELVAM, Advocate (SR-5972[F] dated 12/02/2020)
+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-6369[F] dated 14/02/2020)

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12.02.2020

SMA/13/03/2020/3P/7C