



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **17.02.2020**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.10929 of 2015

and

M.P. (MD) .No.1 of 2015

WEB COPY

K.Srinivasan

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
rep. by its Principal Secretary,
School Education Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
- 2.The Director of Elementary Education,
D.P.I. Campus,
College Road,
Nungambakkam,
Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Virudhunagar,
Virudhunagar District.
- 4.The Additional Assistant Elementary
Educational Officer,
Rajapalayam,
Virudhunagar District.
- 5.Sri Rao Bahadur A.K.D, Dharmaraja
Primary School,
rep. by its Secretary & Correspondent,
Rajapalayam,
Virudhunagar District.
- 6.The Principal Accountant General,
(Accounts and Establishments) of Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.936/F2/2014, dated 01.06.2015 and quash the same and direct the respondents to grant relaxation for not having the



services of 15 years and 3 days within a time frame.

For petitioner	: Mr.R.Subramanian
For respondents 1 to 4	: Mr.N.Shanmugaselvan, Special Government Pleader
For 6 th respondents	: Mr.P.Gunasekaran

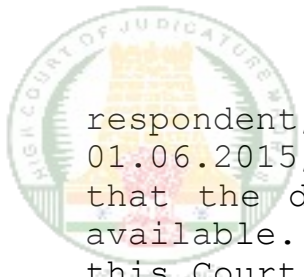
WEB COPY

ORDER

A centenarian has filed this writ petition challenging the order rejecting his claim of pension on the ground of no service records available and for a consequential direction to the respondents to grant relaxation for not having the relieving order and disburse pension to the petitioner for his service of 15 years, 2 months and 3 days within a time frame.

2. The learned counsel for the petitioner submitted that the petitioner had worked as Tamil Pandit in various aided schools from the year 1944 to 1964, for which he was paid salary by the Government. Due to abolition of Tamil Pandit post, on 31.12.1964 the petitioner was relieved from service. The 5th respondent school where the petitioner worked lastly has certified about the petitioner's service and also the payment made by the Government towards salary to the petitioner. Though the petitioner was eligible for pension, he was not paid pension by the Government and hence, the petitioner has sent several representations to the respondents for disbursement of pension. Based on the representation of the petitioner, the third respondent by his proceedings in Na.Ka.No.1409/A3/2010 dated 13.03.2010, directed the 4th respondent to take action and the 4th respondent in turn directed the 5th respondent to submit a pension proposal. The 4th respondent forwarded the proposal of the 5th respondent to the 6th respondent on 16.06.2011. The 6th respondent has issued a letter to the 4th respondent seeking reason for relieving the petitioner from service.

3. The learned counsel for the petitioner would further submit that since there was no progress in the matter, the petitioner has filed W.P.(MD).No.3480 of 2012 seeking a direction to the respondents to pay pension to the petitioner. In that writ petition, the third respondent herein has filed counter affidavit stating that the petitioner was relieved from service due to abolition of post. This Court, by order dated 09.12.2013, directed the respondents to pass orders within a period of eight weeks. The 6th respondent, by order dated 28.02.2014, admitted that the petitioner had served fifteen years, two months and three days and directed the 4th respondent to obtain relaxation from the Government for sanctioning pensionary benefits, as the nature of relieving from service was not known. The 4th respondent sent the proposal for relaxation to the 2nd respondent, instead the 1st



respondent, but the 2nd respondent, by the impugned order dated 01.06.2015, has rejected the claim for relaxation on the ground that the documents relating to service of the petitioner are not available. Challenging the said order, the petitioner is before this Court.

WEB COPY

4. The learned counsel for the petitioner would further submit that the aided schools where the petitioner worked, had given certificates with regard to service of the petitioner. The 5th respondent school has certified that the petitioner relieved from service on 31.12.1964 and at that time, he had been receiving Rs.90/- as pay and Rs.25.50 as D.A. from the Government and Rs.5/- as H.R.A. from the Management. But, the 2nd respondent, without considering the above documents and also the fact that the first respondent is the competent authority to deal with the matter, has erroneously rejected the claim of the petitioner that there is no records available with regard to service of the petitioner. Hence, he prayed to set aside the impugned order and to direct the respondents to pay pension to the petitioner.

5. The learned Special Government Pleader appearing for the respondents 1 to 4 would submit that an employee, who is retired on attaining the age of superannuation or voluntarily alone, is entitled for pension. He would further submit that the petitioner has not produced any document to show the reason for which he was relieved from service and no document has also been produced with regard to service particulars and receipt of salary by the petitioner from the Government and therefore, the 2nd respondent has rejected the claim of the petitioner. Hence, the order passed by the 2nd respondent need not be interfered with. Thus, he prayed to dismiss this writ petition.

6. The learned counsel appearing for the 6th respondent would submit that if the Government grants relaxation, the 6th respondent will give pension to the petitioner.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

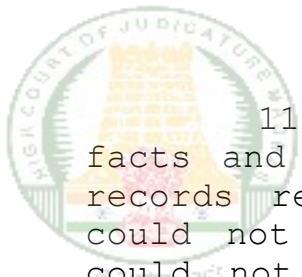
8. According to the petitioner, he served various aided schools as Tamil Pandit on temporary basis for the period between 1944 and 1964. He has served more than 10 years in the 5th respondent school and he was given salary by the Government. The total service of the petitioner is 15 years, 2 months and 3 days and as such, he has become eligible for pension. Due to abolition of the post of Tamil Pandit, the petitioner was stated to be relieved from service on 31.12.1964. The petitioner has produced an order dated 15.07.1953, wherein it is stated the petitioner is appointed to act as Temporary Tamil Pandit in



S.S.Board High School, Rajapalayam in a time scale of pay. The petitioner has further produced an extension order dated 02.06.1964 passed by the 5th respondent school extending his service as Tamil Pandit for the year 1964-65. Having found that the service particulars of the petitioner could not be traceable, the aided schools where the petitioner worked, had given certificates about the period of service of the petitioner in the respective schools. Apart from that, the 5th respondent School where the petitioner worked for a long period, has given a certificate dated 09.02.2018 to the effect that the attendance register, salary slip and other documents relating to the service of the petitioner could not be traceable and that the 4th respondent also personally visited the school and could not trace any document after search. The 4th respondent also certified the same.

9. Rule 12(a) of the Tamil Nadu Non Government Teacher's Pension Rules 1958, a teacher shall be eligible for pension if his/her discharged from service due to abolition of the post. When the documents relating to service particulars of the petitioner could not be traceable, the official respondents those who have been stated to be paid salary to the petitioner, could have produced any documents to show that the petitioner has not been paid salary during the relevant in the 5th respondent school by the Government and that there is no such abolition of the post of Tamil Pandit during the relevant time. But, no such document produced by the official respondents. On the contrary, the petitioner has produced an appointment order, dated 15.07.1953, issued by the then District Collector and Special Officer, Ramanathapuram District and the proceedings dated 02.06.1964 issued by the 5th respondent school extending the service of the petitioner for the year 1964-65. The petitioner has further produced certificates issued by the schools where the petitioner worked, in respect of his service.

10. Considering the fact that the service particulars of the petitioner could not be traceable and also considering the certificates issued by the schools with regard to the service of the petitioner, the fourth respondent has forwarded pension proposal to the 6th respondent accepting the service of the petitioner. But, the 6th respondent has returned the proposal seeking relaxation orders from the Government for sanctioning pension to the petitioner as there is no document as to the nature of his relieving from service. The 3rd respondent has sent proposal to the 2nd respondent to relax the condition to sanction pension. But, the 2nd respondent by the impugned order rejected the proposal stating that no document produced relating to the service of the petitioner.



11. The 2nd respondent has failed to consider the peculiar facts and circumstances of the case and also the fact that the records relating to the service particulars of the petitioner could not be traceable and that the official respondents also could not produce any document negating the claim of the petitioner. The 2nd respondent has further failed to consider the documents produced by the petitioner. As stated earlier, as per Rule 12(a) of the Tamil Nadu Non Government Teacher's Pension Rules 1958, the petitioner is entitled to get pension as he is claimed to be discharged from service due to abolition of Tamil Pandit post. Of-course, it is true that the petitioner has made his claim very belatedly after having lost his physical strength due to old age, but the right of the petitioner cannot be negated for that reason, because he claimed pension only for his survival based on his service not on his old age. As the petitioner is an centenarian and the documents relating to his service could not be traceable, this Court is of the view that the first and second respondents can be directed to consider the case of the petitioner sympathetically based on the documents produced by the petitioner and grant relaxation as sought by the 6th respondent and pension to the petitioner forthwith.

12. In view of the above, the impugned order passed by the 2nd respondent is set aside and the same is remitted to the file of the first respondent. The first respondent is directed to consider the proposal for relaxation based on the records produced by the petitioner and give relaxation as sought by the sixth respondent within a period of four weeks from the date of receipt of a copy of this order. After getting relaxation, the respondents 2 to 4 shall forward the same to the 6th respondent within a period of two weeks thereafter. The 6th respondent is directed to release pension within a period of two weeks from the date of receipt of relaxation order. The official respondents shall bear in mind that the petitioner, who is an centenarian, could enjoy the fruits of this order in his life time only based on their swift action in letter and spirit.

13. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



GCG

To

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

2.The Director of Elementary Education,
D.P.I. Campus,
College Road,
Nungambakkam,
Chennai - 600 006.

3.The District Elementary Educational Officer,
Virudhunagar,
Virudhunagar District.

4.The Additional Assistant Elementary
Educational Officer,
Rajapalayam,
Virudhunagar District.

5.The Principal Accountant General,
(Accounts and Establishments) of Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

+1 CC to MR.R.SUBRAMANIAN, Advocate (SR-6868[F] dated
18/02/2020)

+1 CC to MR.P.GUNASEKARAN, Advocate (SR-7172[F] dated
19/02/2020)

Order made in
W.P(MD)No.10929 of 2015
17.02.2020

_KM/(19.02.2020) SAR1/6P 8C