



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.2885 of 2015

A.Kasthuribai

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 9.

2.The Director of Elementary Education,
Chennai.

3.The Joint Director of Elementary Education,
(Private Schools), Chennai.

4.The District Elementary Education Officer,
Dindigul, Dindigul District.

5.The Assistant Elementary Education Officer,
Dindigul Urban, Dindigul District.

6.The Correspondent,
Sri Savithri Vidyasala Middle School
West Govinda Nagaram,
Dindigul.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 4th respondent in O.Mu.No.3129/AA3/2012, dated 14.05.2014 quash the same and consequently, direct the respondents herein to pay family pension, arrears of pension, revised pension and other monetary benefits accrued to the service of the petitioner together with nominal rate of interest with effect from 26.11.1992, within a reasonable time.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.J.Gunaseelan Muthiah
(R1 to R5) Addl.Govt.Pleader

For R6 : Mr.S.Balasubramania

ORDER

The order of rejection passed by the 4th respondent in proceedings dated 14.05.2014 with reference to the claim of the writ



petitioner for grant of pension, revised pension and other monetary benefits is under challenged in the present writ petition.

2. The writ petitioner was initially appointed as Hand Weaving Instructor at 'Saraswathi Middle School', Vadakarai, Periyakulam, Theni District, during the year 1972 and 1973. Thereafter, the petitioner was appointed in a regular vacancy in the 6th respondent school on 06.10.1973. Her services were regularized and she continued in service till 29.07.1992 in the 6th respondent school. The petitioner states that she opted for voluntary retirement due to her ill-health and family circumstances. She was allowed to retire from service on 26.11.1992, as per the approval of the District Elementary Educational Officer, Dindigul, in his proceedings dated 26.11.1992.

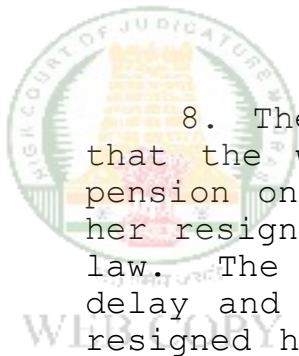
3. The petitioner states that her services are coming under the pensionable establishment and therefore, she is eligible for pension under the Tamil Nadu Pension Rules, 1978.

4. The learned counsel appearing on behalf of the writ petitioner contended that the writ petitioner has served about 19 years of service in the 6th respondent school. Though the petitioner has states that she had completed 20 years of service, the said calculation is erroneous, in view of the fact that she had not completed 20 years of service from the date of regularization. The petitioner has erroneously calculated the period in which she worked as temporary instructor during the year 1972-73. She was regularly appointed on 06.10.1973 and retired from service on 26.11.1992. Thus, she had not completed 20 years of service so as to avail the benefit under the Voluntary Retirement Scheme.

5. The learned counsel for the petitioner is of the opinion that whether an employee was appointed on temporary basis or permanent basis, the services rendered by such an employe is reckoned for the purpose of calculating the pensionary benefits. Thus, the respondents had committed an error in not granting the pension and pensionary benefits to the writ petitioner.

6. The writ petitioner earlier filed W.P.(MD)No.6621 of 2011 and this Court passed an order on 22.01.2014, directing the 4th respondent to consider the representation and pass orders on merits. Pursuant to the said direction, the impugned order dated 14.05.2014 was issued.

7. Thus, the petitioner approached the High Court first time, after her retirement in the year 1992, during the year 2011. More specifically, after a lapse of about 19 years from the date of her retirement.



8. The counter affidavit filed by the 4th respondent reveals that the writ petitioner had submitted a representation claiming pension on 15.04.2011, after a lapse of 19 years from the date of her resignation. The representation itself is not maintainable in law. The writ petition is liable to be dismissed on the ground of delay and laches. It is further stated that the petitioner had resigned her post on 01.06.1992 and her letter of resignation was given approval by the then District Elementary Education Officer, Dindigul, by his order dated 26.11.1992 in Ni.Moo.No.11807/B2/92.

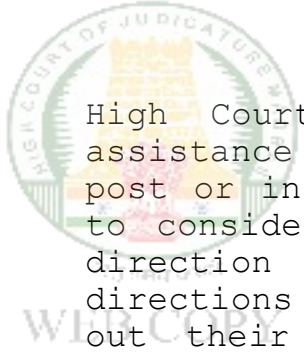
9. With reference to the order regarding acceptance of resignation of the petitioner, she was relieved from duty, which entails forfeiture of all pensionary benefits with reference to Rule 23 of Tamil Nadu Pension Rules, 1978. Thus, the claim of the writ petitioner is untenable and the writ petition is to be dismissed.

10. The 4th respondent has further stated that the petitioner had not rendered a qualifying service of 20 years, for availing the benefits of Voluntary Retirement Scheme, but she had rendered the qualifying services of 18 years 7 months and 27 days only. This apart, the petitioner had submitted a resignation and the said resignation was accepted.

11. This Court is of the considered opinion that the resignation amounts to forfeiture of pensionary benefits. As per the 4th respondent, the petitioner had submitted her resignation letter, which was accepted by the competent authority on 26.11.1992. She was relieved from service. The first representation itself was given to the authorities, after a lapse of 19 years from the date of relieving from the service. Thus, the writ petitioner had made an attempt to restore the cause of action, which was lapsed long before.

12. As far as the Voluntary Retirement Scheme is concerned, an employee, who had rendered 20 years of qualifying service, is entitled to avail the benefit of Voluntary Retirement Service. In the present case, the writ petitioner could not able to establish that she had completed 20 years of service. The 4th respondent has clearly stated that the petitioner had rendered the qualifying services of 18 years 7 months and 27 days. This being the factum, the resignation submitted by the writ petitioner, which was accepted by the authorities, cannot be converted or construed as Voluntary Retirement.

13. As far as the resignation is concerned, it amounts to forfeiture of pension, as per Rule 23 of Tamil Nadu Pension Rules, 1978. Even on that score, the petitioner is not entitled for the relief of pension. As far as the delay and laches is concerned, this Court will have to consider the recent trend of the litigants in restoring the lapsed cause of action, by sending representation and thereafter, filing writ petition before the



High Court. The *modus operandi* of the litigants, with the assistance of legal brain, are that sending a representation through post or in person, immediately filed a writ petition with a prayer to consider the representation and the Courts are issuing such a direction in a routine manner and taking advantage of the said directions of the High Court, the litigants are attempting to work out their remedy with the authorities. Such practice of the litigants can never be appreciated, but to be deprecated. By abusing such direction, there is a possibility that the litigants can take undue advantage or indulge in corrupt activities with the Government Departments. Thus, the Courts are bound to ascertain the rights of the litigants and only if the rights are established, then alone a direction can be issued even to consider the representation.

14. Issuance of a direction to consider the representation in a routine manner will cause prejudice to the authorities competent. As in respect of certain lapsed claims, it would be difficult for the authorities even to trace out the original records to verify the particulars and details of such employee or person. In the present case, the first representation was sent after a lapse of 19 years. Thus, it would be very difficult for the authorities even to trace out the service particulars of the writ petitioner. These aspects are to be considered by the Courts, while granting the relief to consider the representation. The disaster consequences in issuing such a direction are that after creating a cause of action, by filing a writ petition to consider the representation, the litigants are attempting to re-adjudicate the issues, which were settled long years back. Hence, the Courts cannot encourage such back door approach of the litigants for the purpose of restoration of lapsed cause of action. All the persons, including the Government employees, are expected to redress their grievances within a reasonable period of time from the date of arising of cause of action. Once they allow the cause of action to lapse, then they cannot break up and knock the doors of the Court for the purpose of redressal of their claim. The lapsed claim cannot be restored through back door methods.

15. However, large number of writ petitions are filed in the High Courts, merely on the ground that the writ petitioner sent several representations to the respondents and the respondents have not considered the same, taken a decision and passed orders. Under these pretexts, arguments are advanced by stating that the authorities competent are duty bound to pass orders on the representations. The Courts also in a routine manner issuing a direction to the authorities concerned to consider the representations.

16. Such an exercise of the power of judicial review, under Article 226 of the Constitution of India, cannot be done for the purpose of providing a scope to the litigant to reopen the lapsed cause of actions. Once an aggrieved person allowed the cause



of action to get lapsed, then the Courts would not entertain any writ petition thereafter under Article 226 of the Constitution of India. Mere submission of representation after number of years would not provide any cause of action for the aggrieved persons for filing a writ of mandamus.

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17. There is no provision to submit repeated appeals, so also it is not necessary that repeated representations are to be sent to the authorities concerned. One appeal or one representation with all particulars and details to be acknowledged by the authorities competent is the requirement for moving a writ petition for issuing a writ of mandamus. However, the practice of sending representations on several occasions in order to fill up the gap or time limit cannot be entertained by the Courts under Article 226 of the Constitution of India.

18. Most of the times, even these representations are not supported with any acknowledgment. The litigants are typing representations and enclosing it in the typed set of papers and filing it in the Court. In a writ jurisdiction, the High Courts are also not questioning the genuinity of these representations enclosed in the typed set of papers by the litigants. Such a conduct of the litigants amounts to abuse of judicial process. Thus, any representation sent to the authorities competent must be sealed and acknowledged by the authorities competent enabling them to deal with the appeal / representation, take a decision and pass orders by following the procedures contemplated under law. Thus, to entertain a writ of mandamus, it is a precondition that the aggrieved person should have approached the authorities competent against whom such a direction is sought for and the said representation / appeal acknowledged by the authorities competent must be available in the file of the authority concerned. This being the mandatory requirement for the purpose of entertaining a writ petition to direct the authorities concerned to consider the representation, this Court is of the considered opinion that even the legal rights regarding the claim established should also be set out in the writ petition. Once again, it is a precondition that the person approaching the High Court, under Article 226 of the Constitution of India, must establish his legal right. In the absence of establishing any such legal rights, no writ petition can be entertained under Article 226 of the Constitution of India.

19. Thus, for entertaining a writ of mandamus to consider the appeal / representation, the following requirements are to be adhered to:

- (i) The person filing a writ petition should have approached the authority concerned by preferring appeal / representation setting out all the facts and details along with the cause of action arose for filing such appeal / representation.



(ii) Such an appeal / representation must be duly acknowledged by the authority concerned.

(iii) The person, who files a writ petition, should establish that he has established the legal rights for the purpose of redressing his grievances before the competent authority. In other words, it is a precondition that the person, who files a writ petition, should establish the legal rights for the purpose of approaching the competent authority as well as the High Court under Article 226 of the Constitution of India.

(iv) Such an appeal / representation must have been preferred within the time limit prescribed in the Service Rules or at least within a reasonable period.

(v) The normal period of limitation prescribed in the Service Rules of various Departments of the State and Union is that 60 days or 90 days from the date of arising of cause of action. If there is no order affecting the rights of a person, then such an appeal / representation must be filed at least within a period of six months from the date of arising of cause of action. Thus, any appeal or representation must be submitted to the competent authority within a period of six months from the date of arising of cause of action.

(vi) On receipt of such an appeal / representation from the aggrieved person, the competent authority is bound to consider the same and pass orders within a period of six months from the date of receipt of the representation / appeal.

(vii) In the event of not passing any orders within a period of six months, then alone, a writ of mandamus should be entertained for the purpose of issuing a direction to the authority concerned to consider the representation / appeal and pass orders.

(viii) Even such procedures are contemplated in certain Special Acts, namely, Administrative Tribunal Act etc., and several other Acts prescribe time limit for the purpose of preferring appeal and even the Service Rules of various Departments of the State or Union also prescribe time limit for preferring appeal / representation. All such appeals / representations are to be filed within a time limit prescribed and in the event of filing any such appeal / representation beyond the period



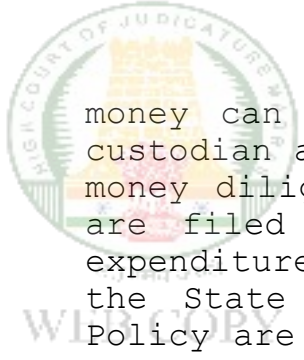
of limitation, then, such an appeal / representation shall be entertained by the competent authority only on filing a petition by the aggrieved person to condone the delay and the delay condonation petition is to be decided by the competent authority by considering the reasons adduced and by taking a decision on merits and in accordance with law.

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20. The remedy of a writ is an extraordinary one, wherein the affected person is expected to approach the High Court soon after the cause of action. Thus, the High Court should not entertain the petitions filed beyond the reasonable period of time and based on the created cause of actions. Creating a cause of action is the recent trend being developed nowadays amongst few persons, who all are attempting to achieve their goal in an indirect manner. Once again, it is the legal brain, which provides such advise to achieve their goals in an indirect manner knowing the fact that they cannot achieve the same directly. All such writ proceedings filed with an intention to achieve the goal in an indirect manner by illegal or irregular means can never be encouraged nor be entertained. All such litigations are to be rejected with heavy costs.

21. The precious judicial hours are to be utilized so as to provide justice to the needy people. High Court being the temple of justice must ensure that speedy justice is provided to all the needy and the persons, who are all approaching the Court with clean hands by establishing their legal rights. Therefore, by curtailing all these unnecessary litigations and by stopping these kind of litigations filed by creating cause of action in respect of lapsed claims, the High Court can utilize the judicial hours for the purpose of rendering complete justice to the poor needy and the litigants, who all are approaching the Court of law with genuine grievances.

22. Large number of litigants, more specifically, the employees of the State and Union are approaching the Court even for subsistence allowance, monthly pension, pensionary benefits and other genuine grievances. The High Court is unable to dispose of those genuine cases on account of the fact that large number of unnecessary litigations are coming in and kept pending for years together. Even the National Litigation Policy as well as the State Litigation Policy implemented by the Union of India and the State are not effectively working out. Large number of litigations are filed vexatiously. Government appeals are filed for the sake of filing. Government appeals are filed based on some untenable opinions offered by the Government Pleaders. It is a financial loss to the State Exchequer. Even for filing an appeal, the State must ensure that adequate legal grounds are available for filing an appeal. Mechanism for filing of appeal at the cost of the taxpayers'



money can never be tolerated by the Courts. The State being the custodian and trustee of the taxpayers' money, is bound to spend the money diligently and based on the necessity. Mechanically appeals are filed by the Departments by spending huge money. All these expenditures are to be properly evaluated and stopped. Even though the State Litigation Policy as well as the National Litigation Policy are in force, the State Government and its officials as well as the Government Pleaders are not conscious about the letter and spirit of such Litigation Policies.

23. The High Courts are overburdened on account of such litigations, wherein the cause of actions are created. This being the factum realized and experienced by many legal luminaires and jurists, this Court is of the considered opinion that effective measures are to be taken to control such litigations, which all are consuming the valuable judicial hours and preventing the genuine litigants, who all are longing to get justice. Therefore, in all such cases, wherein the writ petitions are filed to consider the representations, these principles are to be followed even at the time of admission itself so as to allow the High Court to render a complete justice to the needy poor and so as to uphold the noble concept of justice as adopted in the preamble of our Constitution of India.

24. Identification of vexatious litigations are also to be done by the High Courts. All such litigations are to be rejected with heavy costs so as to prevent such vexatious litigants from approaching the Court again and again. Therefore, these measures are also to be taken while entertaining the writ petitions under Article 226 of the Constitution of India and all such basic principles are to be looked into even at the stage of admission itself to avoid overburdening and preventing the High Court from rendering justice to the needy and deserving citizen of this great Nation.

25. Even recently, the Honourable Supreme Court of India, in the case of Government of India Vs. P.Venkatesh (Civil Appeal No.2425 of 2019), has held as follows:-

"...This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute...."

26. As far as the lis on hand is concerned, the writ petitioner resigned her job and the said resignation was accepted by the competent authority in proceedings dated 26.11.1992. The first



lapse of 19 years, the writ petition was filed in W.P(MD).No.6621 of 2011 and obtained an order of direction to consider the said representation. The 4th respondent rejected the claim of the writ petitioner in order dated 14.05.2014 and the said order is under challenge in the present writ petition.

27. This being the factum established, this Court is of the considered opinion that resignation entails forfeiture of pensionary benefits under the Tamil Nadu Pension Rules, 1978 and therefore, the claim of the writ petitioner cannot be considered on merits also,. Thus, the writ petition stands dismissed both on the ground of latches and on merits. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

MPK

To

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 9.

2.The Director of Elementary Education,
Chennai.

3.The Joint Director of Elementary Education,
(Private Schools), Chennai.

4.The District Elementary Education Officer,
Dindigul, Dindigul District.

5.The Assistant Elementary Education Officer,
Dindigul Urban, Dindigul District.

+1 CC to M/s.K. APPADURAI, Advocate (SR-20088[F] dated 15/10/2020)

+1 CC to M/s.GP (SR-20143[F] dated 15/10/2020)

W.P. (MD)No.2885 of 2015

14.10.2020

pu (CO)

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