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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.8368 OF 2009

S.Sevugan

...Petitioner

Vs

1. State of Tamil Nadu,
rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai - 9.
2. The Director of Elementary Education
College Road, Chennai - 6.
3. The District Elementary Educational Officer,
Coimbatore District, Coimbatore.

...Respondents

PRAYER: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent in relation to G.O.Ms.No.255 School Education (G2) Department dated 09.10.2007 and quash the same in so far as it grants only notional benefits and issue consequential direction to the respondents to regularize the petitioner's service from 16.07.1981 with service and monetary benefits and grant annual increments in the post of Secondary Grade Teacher and Selection Grade and Special Grade of pay as on 16.07.1991 and 16.07.2001 and to grant arrears of salary.

For Petitioner : Mr.R.Saseedharan

For Respondents : Mr.C.Selvaraj
Government Advocate



ORDER

Heard Mr.Saseedharan, learned counsel for the petitioner and Mr.C.Selvaraj, learned Government for the respondents, State/R1, Director of Elementary Education/R2 and District Elementary Educational Officer, Coimbatore District/R3.

2. The petitioner retired as a Primary School Headmaster of Annur Panchayat Union School, Coimbatore District. He was initially appointed as a Secondary Grade Teacher on 02.01.1979 in a vacancy caused by leave. He worked in the leave vacancy till 26.02.1979 and was thereafter appointed as a Higher Grade Teacher on 03.03.1979. He was appointed as a Secondary Grade Teacher again in leave vacancy on 27.01.1981, then again as a Higher Grade Teacher temporarily on 15.07.1981.

3. Finally and by order of the District Educational Officer dated 04.03.1982, a vacancy in the post of Higher Grade Teacher at Kurichilaipalayam was upgraded into that of Secondary Grade Teacher and he was appointed therein on 04.03.1982. He served at that post till his superannuation on 30.06.2003 putting in 24 years of service. Unfortunately, till the date of retirement, his services were not regularised by the respondents.

4. This is a case where the facts, in regard to the delay in processing the request of the petitioner for regularisation of services, speak for themselves and I now proceed to narrate the same. The petitioner, from the time of his assuming the post of Secondary Grade Teacher on 04.03.1982, had been seeking regularisation of service. The affidavit refers to representations made in 1989, 1991, 1993 and 1994 seeking regularisation. Though the aforesaid representations have not been placed on file, there is an internal communication dated 25.11.1995 from the Commissioner, Annur Panchayat to the then Assistant Educational Officer, Annur, seeking certain clarifications upon the application of the petitioner.

5. Again on 27.01.1998, yet another specific clarification was sought for as to whether the employment of the petitioner was through the Employment Exchange. The clarification sought was issued on 17.11.1998, in the affirmative.

6. On 21.01.2000, the District Elementary Educational Officer captures the entire history of the employment of the petitioner and recommends at paragraph 14 of the order that Rule 6 of the Tamil Nadu Elementary Educational Subordinate Service Rules (Rules) that imposes a maximum limit of 35 years for employment under the categories enumerated in the Rules, be relaxed in the petitioner's case. On 13.02.2001, the State



seeks another clarification in regard to whether on all the three occasions when the petitioner was employed in leave vacancies, his sponsorship was through the Employment Exchange.

7. There was no response to the above query posed by the State, hence constraining the petitioner to make an application before the Tamil Nadu Administrative Tribunal (TNAT) in O.A.No.5702 of 2002 seeking a direction to the respondents to consider relaxation of age and regularise his services from 1981 onwards, from which date he had been continuously in employment.

8. The TNAT, vide order dated 07.11.2002 directed the respondents to consider relaxing his age with all consequent benefits thereto, and pass orders within a period of three months from date of the order. Subsequent reminders and representations dated 01.03.2003 and 20.10.2003 met with stony silence constraining the petitioner to approach this Court in W.P.No.26798 of 2004 seeking a mandamus directing the respondents to regularise his services from 1981. This Court, vide order dated 06.10.2004, disposed the said Writ Petition accepting the plea of the petitioner and directing the respondents to dispose his representations for relaxation in light of the order passed by the Tribunal on 07.11.2007.

9. Despite a legal notice dated 15.04.2005, no action was taken by the respondents except to communicate to the petitioner on 25.07.2005 that his application for regularisation was still pending consideration. It appears that the petitioner filed a Contempt Petition before this Court in Contempt Petition No.11 of 2007 for disobedience of order dated 06.10.2004 in W.P.No.26798 of 2004. On account of the Contempt Petition having come up for hearing, the respondents have come to hastily pass the impugned Government Order (G.O.) bearing No.255 dated 09.10.2007 relaxing the age limit in order to facilitate payment of retirement benefits upon superannuation of the petitioner on 30.06.2003.

10. Rule 6 of the Tamil Nadu Elementary Education Subordinate Services Rules (Rules) states thus:-

6.Qualifications:- (a) Age:- No person shall be eligible for appointment by direct recruitment to any of the categories specified in the rules if he or she has completed thirty five years of age on the first day of July of the year in which selection for appointment is made.'

However a relaxation of the age limit is contemplated in worthy cases. In the present case, such relaxation has been granted vide the impugned order, invoking Rule 48 of the Tamil Nadu



State and Subordinate Services Rules and thus the position that the petitioner is entitled for such relaxation is beyond question. Though relaxation of the age has been granted, and the appointment regularised from 16.07.1981 only notional monetary benefits as on the date of retirement has been granted, without the benefit of increments in time scale of pay as available in the post of Secondary Grade Teacher under various time scales from the year 1981. Thus the benefit granted is only in the minimum time scale of pay.

11. The State has availed the services of the petitioner till his superannuation on 30.06.2003. Having done so and particularly, in the light of the order of the Tribunal dated 07.11.2002, and the regularisation of his services from 1981 onwards all consequences such as increments and time scales of pay must be given to him forthwith. However, a measly retirement benefit has been given in minimum time scale of pay.

12. Moreover, the State has the gumption to file a counter in this matter stating that the appointment of the petitioner at the age of 36 when he was one year in excess of the permissible age limit of 35 years, was an inadvertant mistake and it is for this reason that regularisation was not granted nor were the benefits paid over. If so, my pointed question to the State was as to whether responsibility has been fixed in regard to who has committed the mistake and what is the action that has been initiated as against the erring employee. The State confirms that no disciplinary action has been initiated as against the officer.

13. In any event and de hors this aspect of the matter, the petitioner, from whom work has been extracted for 24 years, cannot be made to sit on the sidelines awaiting retirement benefits that are due to him, particularly in a sector such as Education. I am simply appalled at the abject hardship to which the petitioner has been put, as is apparent from the narrative above. This is a case which showcases the lethargy and apathy of the State and its authorities. This Writ Petition is liable to be allowed merely on the strength of the facts as set out above.

14. Impugned G.O. dated 09.10.2007 is quashed. A direction is issued for the regularization of service of the petitioner from 16.07.1981 with service and monetary benefits and grant of annual increments in the post of Secondary Grade Teacher and Selection Grade and Special Grade of pay as on 16.07.1991 and 16.07.2001. The arrears as computed aforesaid shall be paid over to the petitioner, who is now close to 75 years of age, within a period of four (4) weeks from today.

15. This Writ Petition is allowed. No costs.



16. List this matter for reporting compliance on
20.10.2021.

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Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.
2. The Director of Elementary Education
College Road, Chennai - 6.
3. The District Elementary Educational Officer,
Coimbatore District, Coimbatore.

Copy To

The Section Officer,
Writ Section,
High Court, Madras.

+1cc to the Government Pleader, High Court, Madras, S.R.No.47900

W.P.No.8368 of 2009

SJ(CO)
RLP(29/09/2021)