

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.NO.20244 OF 2012

P.Ramalakshmanan

...Petitioner

Vs.

- 1.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 2.The Chief Educational Officer,
Tirunelveli.
- 3.The District Elementary Educational Officer,
Tirunelveli.
- 4.The Asst. Elementary Educational Officer,
Vasudevanallur, Tirunelveli District.Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to take into account of the petitioner's out of employment period from 27.08.1992 to 08.12.1998 as service period and pay the revised pension and other monetary benefits within a time frame.

For Petitioner : Mr.G.Tamilzharasu
For Respondents : Mr.S.Suresh Kumar
Government Advocate

ORDER

The prayer sought for herein is for a writ of mandamus directing the first respondent to take into account of the petitioner's out of employment period from 27.08.1992 to 08.12.1998 as service period and pay the revised pension and other monetary benefits within a time frame.

2.The petitioner was working as Secondary Grade Teacher at AVS Primary School at Vasudevanallur, Tirunelveli District from 16.07.1976 and retired from service on superannuation on 31.10.2009.

3. During the service period, there has been a disciplinary proceeding against the petitioner, result of which, he was placed under suspension with effect from 27.08.1992 and in this regard, when a writ petition was filed before this Court by the petitioner in W.P.No.20013 of 1992 and W.P.No.7412 of 1997, between the petitioner and the School Management, of course in the presence of the official respondents i.e., Education Department, it seems that, there had been a compromise entered into, which had been reduced in writing and had been filed before this Court in the said writ proceedings. Having accepted the said compromise entered into between the parties, this Court, in a batch of cases including the aforesaid two writ petitions, passed an order on 08.04.1999, where, having recorded the compromise reached between the parties, the Writ Court had directed the authorities to pass appropriate orders accordingly.

4. Though such a development had been taken place, subsequently no orders have been passed, whereby the suspension period of the petitioner between 27.08.1992 and 08.12.1998, which was directed to be treated as a duty period for all other purposes except backwages, had not been considered and no orders have been passed.

5. Therefore, only in that circumstances, the petitioner in order to get such orders from the Educational Authorities i.e., the respondents herein has given a detailed representation on 24.08.2011. However, the said representation since has not been considered and decided, he had approached this Court and filed this writ petition with the aforesaid prayer.

6. Heard Mr.G.Tamilzharasu, learned counsel appearing for the petitioner, who made submissions reiterating the aforesaid facts, seeks indulgence of this Court to give a suitable direction.

7. Heard Mr.S.Suresh Kumar, learned Government Advocate appearing for the respondents who relied upon the following passage in the counter affidavit filed on behalf of the respondents.

"Therefore the period of break in service from 27.08.1992 to 08.12.1998 could not be treated as duty without paying salaries for these period from the funds of the management. Therefore the period of break in service from 27.08.1992 to 08.12.1998 cannot be counted for sanction of annual in comments and for calculation as eligible service for pensioner /

benefits. The Joint memo of compromise is in consistent with Rules. Hence the period from 27.08.1992 to 08.12.1998 is really break in service and not duty period as wrongly described to suit the requirement of this petitioner. Hence no order was required to be passed by the educational authorities on the joint memo of compromise. Therefore the representation dated 13.05.2011 of this petitioner addressed to the first respondent and then retransmitted to the third respondent by proceedings dated 3.10.2011 of the first respondent could not be considered as it is against rules."

8.By relying upon the aforesaid averments, the learned Government Advocate would further submit that, in view of the said reason even though the suspended period was treated as a duty period for all other purpose, no financial commitment could be made, therefore, annual increment cannot be expected to the petitioner, he contended.

9.I have considered the said submissions made by the learned counsel appearing for the parties and perused the materials placed on record.

10.In fact, initially the School authorities, where the petitioner had worked, by order dated 27.08.1992, terminated the service of the petitioner and that was not accepted by the Educational Authorities, who passed an order on 09.12.1992 rejecting the said order of dismissal or removal from service against the petitioner.

11.Only in that circumstances, the writ petitions were filed and those writ petitions alone came to be disposed of by the Writ Court, by order dated 08.04.1999, where alone the aforesaid compromise entered, where, among other things, the following term of compromise also recorded.

"5.The Management agrees that the period of suspension may be regularised and consequently the period out of employment namely from 27.8.1992 till date of reinstatement of the petitioner/Teacher may be treated as duty for the purpose of counting seniority, promotion, pension, D.C.R.G., earning of annual increments and for all other service benefits except for back wages for the break period."

12.After recording the said compromise, the learned Judge has passed the following direction to the Educational Authorities.

"4.In view of the above terms of compromise, I am of the considered opinion that no further order is required in the above writ petitions, except to observe that the terms of memo of compromise shall be given effect to, subject to the rules, of course, taking care of the previous service of the petitioner in W.P.No.7412 of 1997 and the educational authorities are directed to pass appropriate orders within four weeks from the date of receipt of a copy of this order. Writ petitions are ordered accordingly."

13.In view of the said compromise entered, which has become part and parcel of the writ proceedings and the order passed on 08.04.1999, pursuant to which, the learned Judge has given a direction to the Educational Authorities to pass appropriate orders, that means regularising the out of service period between 27.08.1992 till 08.12.1998 for all purposes, which include counting of seniority, promotion, pension, DCRG, earning of annual increments except backwages, such order should have been passed by the Educational Authorities i.e., the respondents herein within a reasonable time. However, since no such orders have been passed, the petitioner having given a representation on 24.08.2011 and after having waited for sometime, since no orders were passed on the said representation, filed this writ petition in the year 2012. In view of the aforesaid facts, this Court feels that, pursuant to the orders passed by this Court dated 08.04.1999 in the writ petitions filed by the petitioner as well as the School Management where the compromise has been entered, pursuant to which, a direction was given to the official respondents i.e., the Educational Authorities, such kind of orders regularising the out of service period as duty period for all other purposes except backwages, ought to have been passed.

14.In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders.

That the respondents are hereby directed to consider the representation of the petitioner dated 24.08.2011 and pass necessary orders thereon. While considering the said representation, the orders passed by this Court in W.P.No.20013 of 1992 and W.P.No.7412 of 1997 dated 08.04.1999 shall be taken into account and accordingly, the final orders regularising the out of service period of the petitioner between 27.08.1992 and 08.12.1998 for all purposes except the backwages shall be passed and the needful shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

15.With these directions, this Writ Petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

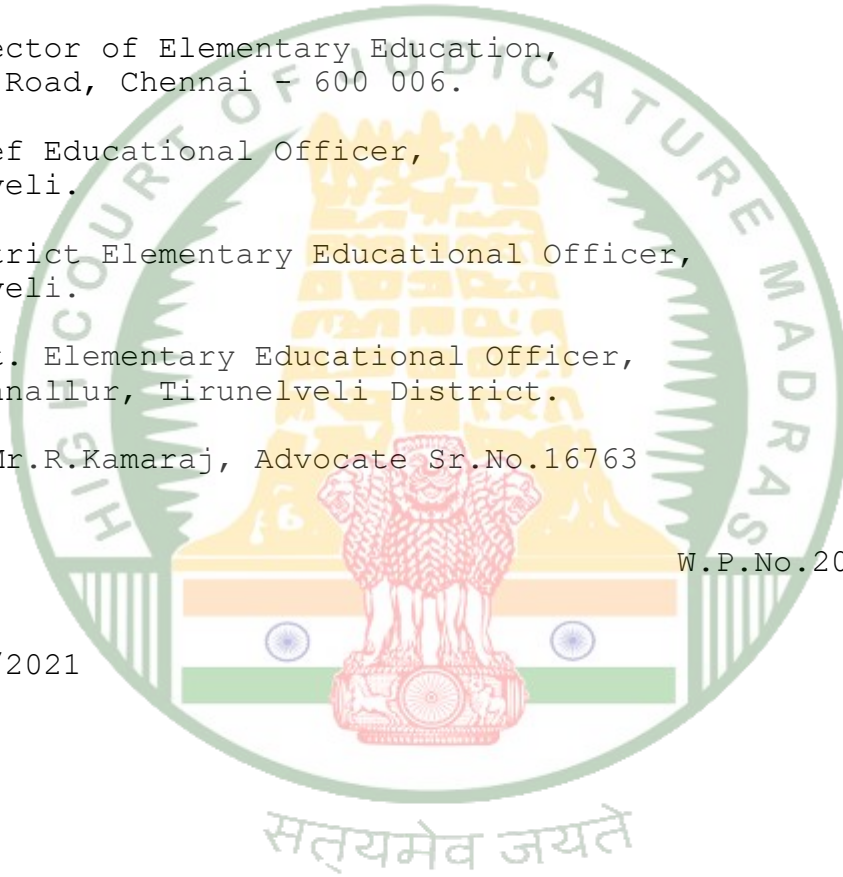
To

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College Road, Chennai - 600 006.
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- 3.The District Elementary Educational Officer,
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- 4.The Asst. Elementary Educational Officer,
Vasudevanallur, Tirunelveli District.

+1 cc to Mr.R.Kamaraj, Advocate Sr.No.16763

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PP(CO)
KKV/28/06/2021



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