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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.27298 OF 2010

1. F.Jesurethinam
2. T.Rukmani

... Petitioners

-vs-

1. The Secretary to Government,
Finance Department, Fort St.George,
Chennai - 600 009.
2. The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600 009.
3. The Director of Collegiate Education,
College Road, Chennai - 600 006.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, praying to direct the Respondents to pay the regular annual increments to the Petitioners and implement the revised scale of pay with effect from 01.01.2006 as per the recommendations of the Sixth Pay Commission with arrears of pay and other consequential monetary benefits in the revised scale with interest within a stipulated period.

For Petitioners: Ms.Swetha Subramaniam
For Respondents: Mr.C.Harsha Raj,
Additional Government Pleader

O R D E R
(through video conference)

Heard Ms.Swetha Subramaniam, Learned Counsel for the Petitioners and Mr.C.Harsha Raj, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Petitioner had retired from service on 31.07.2005 and subsequently, she was re-employed for the period from 01.08.2005 to 31.05.2006. Similarly, the Second Petitioner had retired from service on 31.10.2005 and had been re-employed



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for the period from 01.11.2005 to 31.05.2006. The grievance sought to be ventilated by the Petitioners in this Writ Petition is that for the said periods of re-employment, they were entitled to the benefit of increment of pay scale based upon the recommendations of VI Pay Commission. Such contention cannot be accepted inasmuch as the re-employment after retirement from service is in the nature of contractual arrangement whereby the work is extracted from the persons concerned on account of factors like inability to immediately fill up the vacancies and other administrative exigencies, etc., Those persons are entitled to pension from the date of their retirement and the pension amount paid to them from that date is deducted from the salary amount for the re-employment period. Obviously, the period of re-employment does not fall under the category of regular employment for which alone the recommendations of Pay Commission and consequential fixation of pay would apply. This view is fortified by the judgment of this Court in K.Muthukannan -vs- Government of Tamil Nadu (Order dated 05.10.2010 in W.P. (MD) No. 12515 of 2010) where it has been observed as follows:-

"5. In the impugned order it was stated that the petitioner's actual date of retirement was 30.06.2005. Under the scheme of re-employment, he was re-employed from 01.07.2005 to 31.05.2006. Such re-employment is granted on the basis of a bond exercised by a teacher and after perusing a medical certificate on physical fitness and also on certain conditions. Since re-employment operates from the date of his retirement, his salary will be paid on the last pay drawn and he is eligible for all the pensionary benefits. Instead of paying pension, the teacher will be paid salary after deducting the pension, the balance of salary will be paid. Therefore, he will be eligible for only a revised pension, but not the refixation of salary as if he was in service on the day of the pay revision, i.e. 01.01.2006. Such a re-fixation of salary would not apply to teachers who were working on the re-employment terms."

In that view of the matter, it is not possible to grant the relief as sought by the Petitioner in this Writ Petition.

In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

1. The Secretary to Government,
Finance Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai - 600 009.
3. The Director of Collegiate Education,
College Road, Chennai - 600 006.

W.P.No.27298 of 2010

VBM(CO)
CS/25/11/2021