



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

W.A.No. 2164 of 2021

A. Shanthi

...Appellant

Vs.

1.The Secretary to Government,
Department of Tourism,
Culture & Religious Endowments,
Fort St. George, Chennai 600 009.

2.The Commissioner of Arts & Culture,
Tamil Valarchi Valagam,
Tamil Saalai, Halls Road,
Egmore, Chennai 600 008.

3.The Principal,
Government Music College,
Tiruvaiyaru,
Tanjore District.

...Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 29.10.2020 passed in W.P.No.29527 of 2013.

Prayer in WP No.29527 of 2013 : Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned condition imposed in Para 5 (3) of G.O.Ms. No.88 Tourism and Culture (Culture 1-2) Department dated 24.6.2011 issued by the 1st respondent and quash the same and direct the respondents count the period of service from 8.2.1999 as qualifying service for pensionary benefits allot GPF number to the petitioner by including her name in the Old Pension Scheme under Tamilnadu Pension Rules, 1978

For Appellant	:	Mr.R. Prem Narayan
For Respondents	:	Mr.K.V.Sajeevkumar, Government Advocate



J U D G M E N T

(Judgment of the Court was delivered by S. VAIDYANATHAN, J)

The Present appeal has been filed challenging the dismissal order of the learned single Judge dated 29.10.2020 in W.P.No. 29527 of 2013.

2. Mr.K.V.Sajeev Kumar, learned Government Advocate takes notice for the respondents. By consent of both sides, this Writ Appeal is taken up and disposed of at the stage of admission itself.

3. The Appellant is the Writ Petitioner in W.P.No.29527 of 2017. In the said Writ Petition, the Appellant sought for the relief by challenging G.O. Ms. No.88 Tourisam & Culture (CUL 1-2) Department dated 24.06.2011 and for a direction to the respondents to count the period of service from 08.02.1999 as qualifying service for the purpose of pensionary benefits.

4. In the Writ Petition, the learned Single Judge, by referring to the Judgment of the Hon'ble Apex Court in the case of Union of India & Ors Versus A.S.Pillai & Ors., reported in 2010 13 SCC 448 and subsequent Judgment of this Court in W.A.No.17 of 2018 dated 03.12.2019, reported in 2019 6 CTC 705 came to the conclusion that appellant will not be entitled to regularisation and the relief sought for cannot be granted. Challenging the same, the Present Writ Appeal has been filed by the Appellant.

5. The learned counsel appearing for the Appellant contended that the Appellant has filed the aforesaid Writ Petition to count the period of service rendered by her on contract basis as qualifying service for pension under the Tamil Nadu Pension Rules 1978 by allotting her GPF Account Number, but the learned Judge has dismissed the Writ Petition by misconstruing the relief sought for as if the Appellant has claimed retrospective regularization of her service with effect from the date of her initial appointment and hence the same is liable to be set aside.

6. Mr.K.Sajeev Kumar, learned Government Advocate, who accepted notice on behalf of the Respondents has submitted that the Appellant has been regularised in service from 24.06.2011.

7. Heard both sides. Perused the materials available on record.

8. Admittedly, the Appellant has not approached this Court seeking regularisation. In paragraph 13 of the counter affidavit filed by the First Respondent, it is categorically



stated that the petitioner was appointed as English Teacher in the Tamil Nadu Government Music College of Thiruvaiyaru for the time scale of pay of Rs.9300-34800- Grade Pay. The only contention was that the initial appointment of the Appellants was on a contract basis and thereafter she was absorbed in the regular time scale of pay on 24.06.2011. But the learned Single Judge has proceeded on the basis that the Appellant has approached the Court for regularisation of her services against the sanctioned post.

9. It is not in dispute that the Appellant has already been regularised in service as early as on 24.06.2011, which is evident from reading of the counter affidavit, especially paragraph 13. In the Writ Petition, the Appellant, nowhere sought for regularisation of her services and she wanted her past contract services to be counted for pensionary benefits. Therefore, finding much force in the contention of the Appellant, we are of the view that the order of the learned Single Judge dated 29.10.2020 is liable to be set aside on that score.

10. In the result, this Writ Appeal is allowed. The order passed in W.P.No.29527 of 2013 dated 29.10.2020 is set aside and the Appellant is entitled to the relief as sought for in the Writ Petition. The Respondents are directed to count the period of service from 08.02.1999 as qualifying service for the purpose of pensionary benefits, by including the name of the petitioner in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978, allot a General Provident Fund Account number to her. The entire exercise has to be completed within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arr

To

1.The Secretary to Government,
Department of Tourism,
Culture & Religious Endowments,
Fort St. George,
Chennai 600 009.



2.The Commissioner of Arts & Culture,
Tamil Valarchi Valagam,
Tamil Saalai, Halls Road,
Egmore, Chennai 600 008.

3.The Principal,
Government Music College,
Tiruvaiyaru,
Tanjore District.

+lcc to M/s.R.Prem Narayan, Advocate, S.R.No.44172

+lcc to the Government Pleader, S.R.No.44869

W.A.No. 2164 of 2021

SSV(CO)
RVM(23/11/2021)