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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27113 of 2016

and

W.M.P.Nos.23291 & 23292 of 2016, 29084 of 2019

J.Ravi

... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2.The Teachers Recruitment Board,
Represented by its Member Secretary,
College Road, Chennai - 600 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in connection with the order passed in Letter No.6727/TRB/2016-1 dated 25.05.2016 and the order passed by the second respondent in Na.Ka.No.7888/A1/2016 dated 27.07.2016 and quash the same and consequently directing the respondents to regularize the service of the petitioner with effect from the date of appointment and to confirm the regularization order passed by the second respondent in his proceedings dated 10.10.2002 in Na.Ka.No.2037/A4/2002, and to pay all the monetary and service benefits.



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For Petitioner : Mr.R.Singaravelan
Senior Counsel
for Ms.S.Lesi Saravanan

For Respondents :
For R1 : Mr.L.S.M.Hasan Fizal
Government Advocate
For R2 : Mr.C.Kathiravan
Standing Counsel

ORDER

The petitioner was recruited under Rule 10(a) (i) of the Tamil Nadu State and Subordinate Service Rules as a Typist with the second respondent Teachers Recruitment Board (TRB). The appointment was on temporary basis. Since the recruitments were not made on regular basis, the petitioner was however allowed to continue.

2. Ultimately, the second respondent also regularized the services of the petitioner in terms of G.O(Ms).No.160, School Education (Q2) Department dated 27.09.2001. During the interregnum, the petitioner had challenged a Memo issued by the second respondent on 25.11.1992.

3. The Tamil Nadu Administrative Tribunal by its order dated 22.01.2001 in O.A.No.5968 of 1992 dismissed the Original Application filed by the petitioner. Though the petitioner's services were regularized in terms of G.O(Ms).No.160, School Education (Q2) Department dated 27.09.2001 and his probation was later declared on 23.12.2002, the petitioner was however advised to file a writ petition against the order of the Tamil Nadu Administrative Tribunal by way of a writ petition in W.P.No.5155 of 2004.

4. In the aforesaid writ petition, the petitioner also secured an interim order and later withdrew the writ petition based on the endorsement made by the learned counsel for the petitioner as the relief claimed had been granted by the second respondent Teachers Recruitment Board (TRB). Long after the withdrawal of the writ petition, the second respondent Teachers Recruitment Board (TRB) woke up and obtained a legal opinion from the then Special Government Pleader as to why the services



of the petitioner ought to be terminated as the petitioner had not cleared the Mandatory Test required under the Rules.

5. The said Special Government Pleader had opined that Government could pass appropriate orders ratifying the action of the second respondent Teachers Recruitment Board (TRB) in regularizing the services of the petitioner without the petitioner passing in the qualifying test while making it clear that the relaxation was a special case and cannot be cited as precedent. The opinion also stated that Government may also consider the case of the petitioner for monetary benefits only to be one in future if the petitioner's regularization is so ratified.

6. Pursuant to the above opinion of the learned Special Government Pleader, the Government by its letter dated 25.05.2016 bearing Letter No.6721/TRB/2016-1 addressed to the second respondent has stated that the appointment of the petitioner was not in accordance with the Rules and as such the request of the Chairman, Teachers Recruitment Board for ratifying the action of the Teachers Recruitment Board in regularizing the services of the petitioner and completion of probation and declaring the same without passing the qualifying test cannot be agreed by the Government and the monetary benefit if any allowed by virtue of regularization and declaring probation has to be recovered by the petitioner.

7. Pursuant to the same, the impugned Show Cause Notice dated 27.07.2016 was issued to the petitioner calling upon to show cause as to why the amounts paid to the petitioner and why the monetary benefits given to the petitioner should not be recovered and why the services of the petitioner should not be terminated. This Court had also initially granted interim order pursuant to which the petitioner was allowed to continue in service. The petitioner has now attained the age of superannuation on 28.02.2020. The petitioner though has served from 01.09.1988 with the second respondent Teachers Recruitment Board (TRB) and is now being deprived of pension in view of the aforesaid stand of the first respondent.

8. Appearing on behalf of the petitioner, the learned senior counsel for the petitioner submits that the entire proceedings initiated by the respondents is vitiated and



contrary to the well-settled principles of law. He submits that having regularized the services of the petitioner, the respondents cannot issue the impugned Show Cause Notice at the fag end of the career of the petitioner and calling upon to show cause as to why his services should not be terminated or why the amount paid to the petitioner should not be recovered from the petitioner.

9. The learned senior counsel for the petitioner further submits that if the services of the petitioner was not regularized in terms of G.O(Ms).No.160, School Education (Q2) Department dated 27.09.2001 vide order dated 10.10.2002 and the subsequent declaration of probation on 23.12.2002, the petitioner would not have withdrawn the writ petition and pursued the remedy in W.P.No.5155 of 2004.

10. Appearing on behalf of the second respondent, the learned standing counsel submits that the appointment of the petitioner in the year 1988 was on a temporary basis in terms of Rule 10(a) (i) of the Tamil Nadu State and Subordinate Services Rules. The appointment of the petitioner was irregular and therefore the petitioner cannot claim any preference in the post even if the second respondent had committed a mistake while regularizing the services of the petitioner in the year 2002. He further submits that the recruitments to public service can be only through examinations and procedures called for by the Tamil Nadu Public Services Commission or the second respondent Teachers Recruitment Board (TRB) and since the regularization was contrary to the provisions of the aforesaid Rules, this writ petition was liable to dismissed. Finally, learned standing counsel for the second respondent submits that the petitioner has been issued with a Show Cause Notice and therefore the writ petition itself was premature and the petitioner ought to have filed a reply. Instead, the petitioner has directly rushed to the Court thereby bypassing the departmental proceedings.

11. Heard the learned counsel for the petitioner and the learned Government Advocate for the first respondent and the learned standing counsel for the second respondent. I have perused the impugned Show Cause Notice dated 27.07.2016 and the orders of the Tamil Nadu Administrative Tribunal dated 22.01.2001 in O.A.No.5968 of 1992 and the subsequent regularization of the service in terms of G.O(Ms).No.160, School



Education (Q2) Department dated 27.09.2001 and the orders passed by this Court including the order passed in this writ petition at the time of admission.

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12. The facts remains that the petitioner was in service with the second respondent Teachers Recruitment Board (TRB) right from 1988 with effect from 29.08.1988. Having allowed the petitioner to remain in service and having regularized the services of the petitioner even though the petitioner failed to clear the mandatory test that was warranted, it is not open for the respondents to wake up at the fag end of the career of a Government employee to call upon such an Government employee to show cause as to why his/her services should not be terminated or why the amounts paid to him/her so far should not be recovered. There are no records to indicate that the petitioner has discharged his duty as a Typist since his appointment inefficiently. Had the department issued a Show Cause Notice immediately after the services were regularized perhaps, this writ petition could have been dismissed. However, in this case, the fact remains that the petitioner was appointed in the year 1988 and his services were regularized on 01.09.1988 and probation was declared on 23.12.2002 with effect from his initial appointment. The petitioner has also attained the age of superannuation during the pendency of this writ petition on 28.02.2020.

13. Considering the fact that the petitioner had put a long period of service with the respondents, the respondents cannot initiate such proceedings and harass such a Government servants. The proceeding was arbitrary and denies the right to retire from Government service with dignity to a Government servant who has otherwise put in a long period of service without any negative remark.

14. In the light of the above, this Writ Petition is allowed by quashing the impugned Show Cause Notice by directing the respondents to finalize the pension papers of the petitioner and start paying pension from 1st of November of 2021 regularly. The respondents are also directed to pay arrears of pension together with the applicable statutory rate of interest on the delayed payment of terminal benefits and pension within the aforesaid period.



15. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Secretary,
Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 600 009.

2.The Member Secretary,
Teachers Recruitment Board,
College Road, Chennai - 600 006.

+1CC to M/s.Lesi Saravanan, Advocate, SR.No. 50595

W.P.No.27113 of 2016
and

W.M.P.Nos.23291 & 23292 of 2016, 29084 of 2019

VG II(CO)
B.VC (02/11/2021)