

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.1129 of 2020

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 9.

2.The Director of School Education,
College Road,
Chennai - 6.

3.The Chief Educational Officer,
Salem District,
Salem.

4.The District Educational Officer,
Salem.

... Appellants

Vs

1.K.C.Sadasivam

2.The Correspondent,
Bharathi Vidyalaya Higher Secondary School,
Salem-636 007.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order made in W.P.No.33944 of 2013 dated 13.07.2020.

Prayer in W.P.No.33944 of 2013 : Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed by the first respondent in Letter NO.1806/D2/11-1 dated 23.02.2011 and confirmed in Letter No.19565/D2/2012-1 dated 06.06.2012 and quash the same and consequently direct the first respondent to sanction pensionary benefits.

For Appellants : Mr.C.Munusamy
Spl. Government Pleader
(Education)

For Respondents : Mr.S.Kamadevan
for respondent No.1

JUDGMENT

(Delivered by SENTHILKUMAR RAMAMOORTHY,J.)

The State is in appeal against an order dated 13.7.2020 in W.P.No.33944 of 2013. By the said order, the State was directed to pay pension to the first respondent-writ petitioner in terms of G.O.Ms.No.37, Department of Education, Science and Technology, dated 5.1.1983.

2. The main contention on behalf of the State is that G.O.Ms.No.37 is inapplicable to employees who resigned from service. In support of this contention, learned Special Government Pleader (Education) relies upon a judgment of a Division Bench of this Court in W.A.No.SR127528 of 2019, dated 20.7.2020. In particular, paragraph 6 of the said judgment is relied upon, wherein the Court concluded that G.O.Ms.No.37 does not assist the appellant therein, inasmuch as it is applicable only in specific circumstances such as discharge from service due to invalidation on medical grounds or instances wherein relaxation is granted by the Government to persons who could not have foreseen the institution of the pension scheme when they had resigned.

3. On the contrary, it is asserted on behalf of the first respondent-writ petitioner that the appellants had considered the claim of the writ petitioner in terms of G.O.Ms.No.37 and had issued proceedings dated 21.6.2014, wherein it was concluded that the writ petitioner may be entitled to pension in terms of

G.O.Ms.No.37, inasmuch as he resigned on 22.6.1978, which is prior to the crucial date, namely, 5.6.1981. It is further submitted that such proposal was not acted upon only on account of the non-availability of a sanction from the Government. In this regard, the letter dated 26.10.2018 from the Office of the Principal Accountant General is referred to, wherein it is stated that the Government is the authority to sanction pension and that therefore the proposal of the writ petitioner is returned for re-transmission to his office after obtaining the necessary sanction.

4. Upon consideration of the contentions of the contesting parties, it is clear that the case turns on the applicability of G.O.Ms.No.37. Upon perusal thereof, it is evident that as regards non-teaching staff of aided schools, such as the writ petitioner herein, the crucial date is 5.6.1981. Paragraph 5 of G.O.Ms.No.37 is pertinent for purposes of this case and the said paragraph is set out herein under:

"5. When pension was sanctioned from 5-6-81 to non-teaching staff etc, who had retired before the crucial dates, the following specific orders were issued.

(i) the minimum pension admissible may be sanctioned on the basis of collateral evidence even where service books are not available and where no records are available to verify the service particulars.

(ii) Pension can be sanctioned even in cases where the incumbents had 'resigned' since they could not have foreseen the institution of pension scheme at the time they 'resigned'.

(iii) In the case of invalidation on Medical grounds pension can be sanctioned even in cases where the procedure prescribed in the Tamil Nadu Pension code had not been followed (G.O.1483, Edn.27-8-73)."

5. In the case at hand, the undisputed position is that the writ petitioner resigned or left the services on 22.6.1978 and this is prior to the introduction of the pension scheme. Paragraph 5 of G.O.Ms.No.37 and, in particular clause (ii) thereof, indicates that the authorities have the discretion to grant pension even to persons who resigned prior to the institution of the pension scheme because they could not have

foreseen the institution of the pension scheme at the time they resigned. It also appears from the documents on record that the proposal for payment of pension to the writ petitioner was forwarded to the District Educational Officer by the Joint Director of School Education (Personnel) by communication dated 21.6.2014. Therefore, it is clear that the appellants were also of the view that the writ petitioner's claim for pension could be considered in terms of G.O.Ms.No.37.

6. By the order impugned, the Writ Court has allowed the writ petition and directed the respondents therein to calculate and pay the pension to the writ petitioner within a stipulated period. Inasmuch as G.O.Ms.No.37 confers discretion on the authorities to consider the claim of a person who resigned before the crucial date, the order of the Writ Court takes away such discretion from the authorities concerned by directing payment of pension. To that extent, the order impugned is liable to be interfered with. However, the writ petitioner is entitled to the consideration of the proposal for payment of pension which is already pending before the relevant authorities.

7. For the reasons aforesaid, the order dated 13.7.2020 in W.P.No.33944 of 2013 is modified by directing the first appellant to consider the pending pension proposal, which was forwarded under proceedings dated 21.6.2014 by the Joint Director of School Education (Personnel), and to pass orders thereon within a period of two months from the date of receipt of a copy of this order.

W.A.No.1129 of 2020 is disposed of on the above terms. No costs. Consequently, C.M.P.No.13802 of 2020 is closed.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 9.

2.The Director of School Education,
College Road,
Chennai - 6.

3. The Joint Director of School Education (Personal),
Chennai-6.

4.The Chief Educational Officer,
Salem District,
Salem.

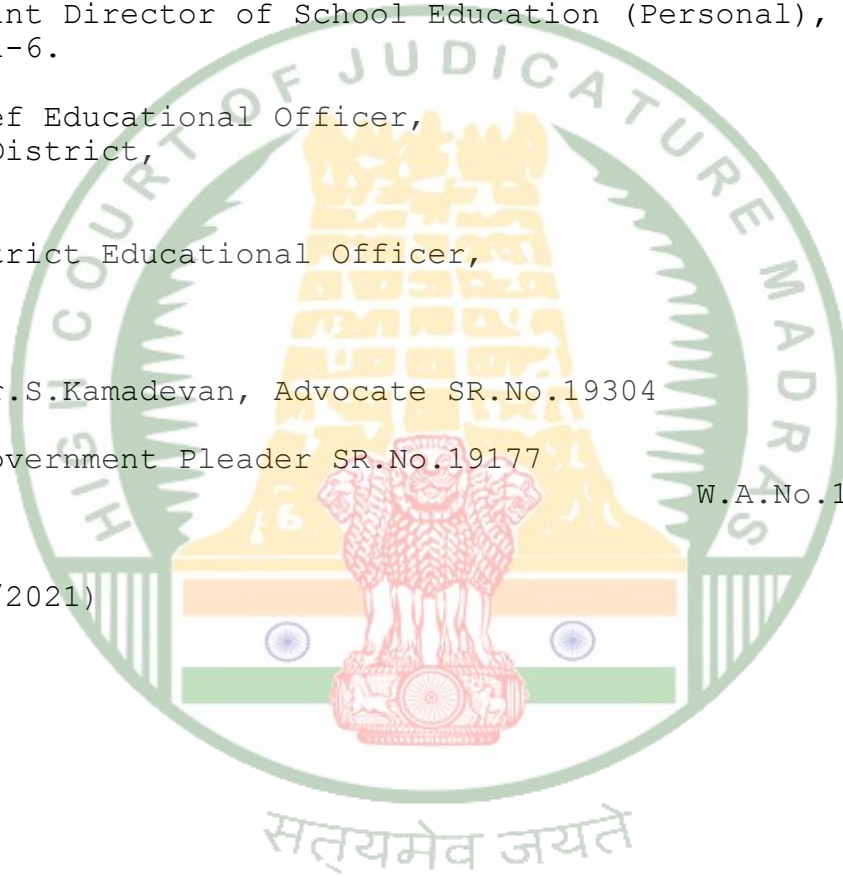
5.The District Educational Officer,
Salem.

+1cc to Mr.S.Kamadevan, Advocate SR.No.19304

+1cc to Government Pleader SR.No.19177

W.A.No.1129 of 2020

GMI (CO)
GMY (15/04/2021)



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