

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on	Pronounced on
12.03.2021	18.03.2021

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CORAM**THE HONOURABLE MR. JUSTICE M.DHANDAPANI****W.P. (MD) NO. 10327 OF 2017**

U.Narasimhan

.. Petitioner

- Vs -1. The Director of Elementary Education
Chennai - 6.2. The District Elementary Educational Officer
Dindigul.3. The Assistant Elementary Educational Officer
Dindigul.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 2nd respondent to count the service of the petitioner for the period from 6.6.1974 to 31.5.1991 along with the service of the petitioner from 1.6.1991 to 30.6.2009 like that of other similarly placed person extending the benefit of counting the service of the unaided school by order of the 1st respondent in Letter No.74418/D2/96 dated 21.7.1997 and in the light of the judgment of this Hon'ble Court reported in 2013 (5) MLJ 427 dated 1.4.2013 and consequently direct the 2nd respondent to grant Selection Grade, Special Grade, monetary and other service and consequential pensionary benefits for the entire period from 6.6.1974 to 30.06.2009 for 35 years of service.

For Petitioner : Mr. S.Govindan

For Respondents : Mr. C.M.Marichelliah Prabhu, AGP

ORDER

The present petition has been filed for a direction to the 2nd respondent to consider the representation submitted by the petitioner for counting his service for the period while the school was functioning as an recognised unaided school between 6.6.1974 and 31.5.1991 and to count the said period along with his further service for the purpose of calculation of pension, selection/special grade as well as other consequential service and retirement benefits in line

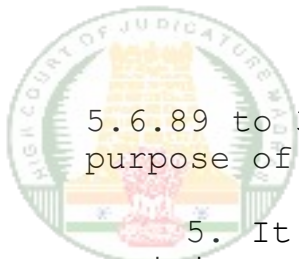


with the order passed by this Court and by taking into consideration the relief granted to similarly placed persons.

2. It is the undisputed case of the parties that the petitioner was appointed as Higher Grade Teacher on 6.6.1974 in the unaided recognised and approved school at Anginugu Palangalathu Palli, Dindigul and he continued in the said post till the year 1985 and, thereafter, he was absorbed as Secondary Grade Teacher in 1985 and retired on 30.6.2009. It is the further case of the petitioner that the school was converted as aided school vide issuance of G.O. Ms. No.41 dated 29.4.1997 retrospectively from 1.6.1991 and for all purposes, the petitioner was in the employment of the aided school from 1.6.1991 till the date of his superannuation on 30.6.2009. It is the further case of the petitioner that on the superannuation of the petitioner, he was paid the retirement benefits for the period from 1.6.1991 to 30.6.2009 and not from his initial date of recruitment, viz., 6.6.1974. Therefore, the petitioner submitted a detailed representation on 7.3.12 to the 1st respondents to count the service rendered by him for the period 6.6.1974 to 31.5.1991 as has been considered in the case of similarly placed persons and to grant pensionary benefits, which was forwarded to the 2nd respondent vide letter dated 4.6.12. However, no orders have been passed. It is the further case of the petitioner that though his services was in a permanent vacancy, which was regularly inspected by the official respondents, however, the service of the petitioner was considered for the purpose of grant of selection grade and special grade and other service benefits. Once again the petitioner submitted a representation on 6.11.12 and, thereafter, on 24.2.17 and since no orders have been passed on the representations, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that by issuance of G.O. Ms. No.41 dated 29.4.97, the school in which the petitioner was working was made an aided institution on and from 1.6.1991 and the school was permitted to continue with the five teachers, who were on the rolls of the school even during the period the school was functioning as an recognised unaided school and such being the case, the period of the service of the petitioner in the unaided recognised institution also ought to be taken into consideration for the purpose of computing the qualifying service for the purpose of service and retirement benefits. However, the service of the petitioner from 6.6.74 to 31.5.91 has not been counted for the purpose of service and retirement benefits inspite of similarly placed persons being granted the said benefits.

4. In this backdrop, learned counsel for the petitioner drew the attention of this Court to the communication addressed by the 1st respondent to the 2nd respondent in the case of a similarly placed person, who had been in the service of an unaided school since



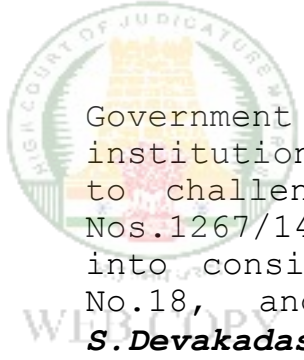
5.6.89 to 31.5.94, whose service was permitted to be counted for the purpose of calculating the service and retirement benefits.

5. It is the further submission of the learned counsel for the petitioner that the Government had, vide issuance of G.O. Ms. No.1093 dated 3.7.1979, permitted the inclusion of persons of recognised schools to the Family Benefit Fund Scheme, which clearly means that the Government had accepted the earlier service of such persons and such being the case, the petitioner being a person included in the Family Benefit Fund Scheme, is also entitled to have his service counted for other purposes of service and retirement benefits and any exclusion of the same is *per se* impermissible.

6. Learned counsel for the petitioner placed reliance on the decision of the learned single Judge of this Court in **S.Veerabadran - Vs - Government of Tamil Nadu & Ors. (2013 (5) MLJ 427)**, wherein, G.O. Ms. No.143 dated 30.01.1987 was pressed into service in and by which the Government had allowed the claim of a teacher for counting the past service rendered in a Matriculation School. It is therefore submitted that the petitioner also being a person, identically placed, is also entitled to similar treatment and consideration and any exclusion of the petitioner from the purview of G.O. Ms. No.143 would strike at the very root of Article 14 of the Constitution of India.

7. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that pension is governed under the Tamil Nadu Pension Rules, 1978 and Rule 12 (i) covers the service of the persons for the purpose of qualifying for pension. It is the submission of the learned Addl. Government Pleader that the petitioner, not being an employee under the Government between 6.6.1974 and 31.5.1991, and no pay or allowances having been paid to the petitioner by the Government from the consolidated fund of the State, the service of the petitioner cannot be said to be service regulated and paid by the Government.

8. It is the further submission of the learned Addl. Government Pleader that the actual service under the Government is rendered by the petitioner only from 1.6.1991, though the petitioner has put it almost 16 years of service prior to the school being granted aid by the Government. To buttress his submission, learned Addl. Government Pleader placed before the Court, G.O. Ms. No.314 dated 12.12.1999 in and by which G.O. Ms. No.18 was rescinded by the Government and the Government had ordered that the private schools, which were recognised, but were running without grant-in-aid from the Government prior to 1.6.1997, the staff of the said schools would be entitled to count their past service only for the purpose of promotion and the said past service shall not be counted for the purpose of service and retirement benefits. It is the submission of the learned Addl. Government Pleader that the above stand of the



Government with regard to counting of service rendered in an institution, which did not receive aid from the Government was put to challenge before the Division Bench of this Court in W.A. Nos.1267/14 and 40/15 and the Division Bench of this Court, taking into consideration G.O. Ms. No.314, which had replaced G.O. Ms. No.18, and following the ratio laid down in the case of **S.Devakadasham - Vs - District Educational Officer, Villupuram & Ors. (2006 (4) MLJ 1580)**, held that the claim of the respondents therein to have their past service counted for the purpose of service and pensionary benefits was negated.

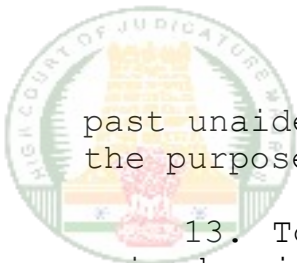
9. It is the further submission of the learned Addl. Government Pleader that the petitioner herein, also being a person similarly placed, cannot lay his claim on the basis of the decision of the learned single Judge in *Veerabadran's case (supra)*, which has been struck down by the Division Bench in W.A. Nos.1267/14 and 40/2015. It is the further submission of the learned Addl. Government Pleader that G.O. Ms. No.143 has also been taken into consideration by the Division Bench in the aforesaid judgment and it was found that the said G.O. Ms. No.143, based on which relief is being sought by different persons at different points of time is a fake Government Order and the actual G.O. Ms. No.143 dated 30.01.1987 does not in any way relate to pensionary benefits. Accordingly, the learned Addl. Government Pleader prays for dismissal of this petition.

10. Learned Addl. Government Pleader placed reliance on the following decisions in support of his submissions :-

- i) *K.Pitchai - Vs - State of Tamil Nadu & Ors.* (W.P. (MD) No.20326/2013 - Dated 28.02.2018)
- ii) *Pattammal - Vs - The Principal Accountant General & anr.* (W.P. (MD) No.2849/2015 - Dated 5.3.2018)
- iii) *The Secretary to Govt. & Ors. - Vs - S.Veerabadran & Ors.* (W.A. No.1267/14, etc. Dated 5.7.2018)
- iv) *N.Dharma Raj - Vs - Govt. of Tamil Nadu & Ors.* (W.P. (MD) Nos.12927/2014, etc. - Dated 10.11.2020)

11. This Court paid its considered attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions to which this Court's attention was drawn.

12. As already stated above, the facts in issue relating to the service of the petitioner, viz., his initial appointment in the recognised unaided institution and his subsequent continuance in the said post after the school became an aided institution and his superannuation are not in dispute. The only question that is canvassed on behalf of the petitioner is that his services in the



past unaided recognised school also should be taken into account for the purpose of calculating his service and retirement benefits.

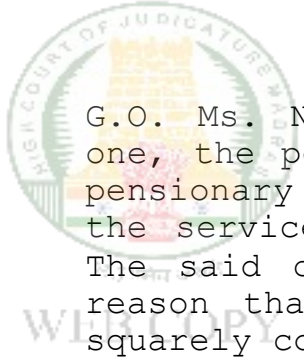
13. To lay hands on the above claim, two-fold contentions are raised, viz., firstly, the persons, who have been in the service of unaided recognised schools being permitted to come within the Family Benefit Fund Scheme issued vide orders in G.O. Ms. No.171, Education, dated 2.2.1974; and secondly, that G.O. Ms. No.143 confers the benefit sought for by the petitioner to similarly placed persons and in view of the order of the learned single Judge in *Veerabadran's case (supra)*, the respondents should count the past service of the petitioner in the recognised unaided establishment for the purpose of service and retirement benefits.

14. Though this writ petition could be very well dismissed by this Court on the question of delay and laches, however, in view of the intricate nature of contentions advanced on behalf of the petitioner, as countered by the learned Addl. Government Pleader, this Court is inclined to dwell deep into the gamut of facts to arrive at a subjective finding.

15. A careful perusal of the entire materials available on record, right from the very many Government Orders on which reliance has been placed by the parties as also the decisions relied on by the learned Addl. Government Pleader, even at the very outset, this Court, without even an iota of hesitation, is of the considered opinion that the present writ petition deserves to be dismissed for the below mentioned reasons.

16. Firstly, G.O. Ms. No.143, dated 30.1.1987 has been held to be a fake Government Order, as is revealed from the decision of this Court in ***W.P. (MD) No.20236 of 2013 dated 28.2.2018***, which finding has since attained finality. It is further to be pointed out that G.O. Ms. No.314 has been upheld by the Division Bench of this Court in *Devakadasham's case (supra)* and that being the undisputed position and the said finding of the Division Bench having not been nullified by a superior forum, the stand of the petitioner that he should also be given the benefit of G.O. Ms. No.143 is wholly misconceived, when G.O. Ms. No.314 has been upheld, which is later in point of time and more so, when G.O. Ms. No.143 has been held to be fake. When the Government Order itself has been disowned by the respondents and has been held to be a fake document, neither can any relief be claimed nor can any relief be granted. Further, the decision of the learned single Judge in *Veerabadran's case (supra)* has since been reversed in appeal and, therefore, the claim for relief on the basis of G.O. Ms. No.143 are liable to be rejected.

17. The second limb of the argument of the petitioner that since the employees of the recognised unaided schools having been permitted to be members under the Family Benefit Fund Scheme vide



G.O. Ms. No.1093 dated 3.7.1979, of which the petitioner is also one, the petitioner is also entitled to the benefit of service and pensionary benefits, as the school is a recognised school and that the service of the petitioner has been permitted to be continued. The said contention, *ex-facie*, is not sustainable for the simple reason that insofar as pensionary benefits are concerned, it is squarely covered by the Tamil Nadu Pension Rules.

18. As pointed out by the respondents, the service of the Government servant is covered under Rule 12 of the Tamil Nadu Pension Rules, which clearly prescribes that for the purpose of qualifying for pension, the duties, pay and conditions of service of the person should be regulated by the Government. Further, Rule 12 (2) codifies service under the Government as service paid for by the Government from the Consolidated Fund of the State.

19. It is borne out by record, which has been admitted by the petitioner, that prior to 1.6.1991, the petitioner, though had been in the service of the recognised school since 6.6.1974, but the pay and other allowances and conditions of service were as per the prescription of the school and were neither governed nor paid by the Government. To put it precisely, on and from 6.6.1974 to 31.5.1991, the petitioner was not paid from the coffers of the Consolidated Fund of the State, but from the private institution. That being the case, the case of the petitioner is hit by Rule 12 (2) of the Pension Rules and the service of the petitioner in the erstwhile private management, though recognised, cannot be counted to be qualified service regulated by the Government. Further, G.O. Ms. No.314, dated 12.12.1999 has been upheld by this Court and the said Government Order has attained finality and, therefore, the stand of the petitioner that his past services should be counted for the purpose of service and retirement benefits has no legs to stand.

20. Further, the relief sought for by the petitioner by placing reliance upon Letter No.74418/D2/96 dated 21.7.1997 of the 1st respondent relating to a similarly placed person, cannot be taken into consideration for the purpose of granting similar relief to the petitioner for the simple reason that the said letter is bereft of any particulars relating to the basis on which the said relief has been granted to the person therein. Placing a particular piece of paper, which has conferred some benefit on a certain individual without placing the other materials, which formed the backbone for consideration and decision making process and passing of such an order, praying for similar directions would result in improper orders being passed, as the said procedure is unwise and conferring such benefit without properly appreciating the facts of the individual cases would lead to imprudent and contradictory orders being passed, thereby hampering the law of precedents in the judicial forum. In the absence of particulars relating to the said letter, which has conferred certain benefits on some individual, who



is alleged to have been similarly placed, this Court is not inclined to grant the relief sought for by the petitioner herein.

21. Therefore, on an overall conspectus of the matter, this Court is of the considered view that the relief sought for by the petitioner for grant of service and retirement benefits by counting the period of service of the petitioner from the date of his entry into service in the recognised unaided institution till the date the institution was provided with grant-in-aid, viz., from 6.6.1974 to 31.5.1991, cannot be acceded to for the reasons aforesaid and, accordingly, this petition deserves to be dismissed.

22. For the reasons aforesaid, this writ petition fails and, accordingly, the same is dismissed. However, there shall be no order as to costs.

23. Pausing here for a moment, way back in the year 2006, in the decision in *Devakadasham's case (supra)*, not only G.O. Ms. No.314 dated 12.12.1999 has been upheld, but the Division Bench has gone on further to hold that grant of payment of salary to a person is to be made only if the person is appointed in a sanctioned post. The decision in *Veerabadran's case (supra)*, on which reliance has been placed by the petitioner, takes into account G.O. Ms. No.143 dated 30.01.1987 and on the plane of equality, the relief has been granted. However, the said decision in *Veerabadran's case (supra)* stands reversed by the decision of the Division Bench of this Court in W.A. Nos.1267/14 and 40/15 dated 05.07.2018. It is to be pointed out that before the learned single Judge, the decision in *Devakadasham's case (supra)* was not pointed out by the counsel for the parties. However, rightly so, the Division Bench, in appeal, has reversed the said decision.

24. However, it is submitted before this Court that very many petitions are being filed, right and left, by persons, placing reliance on G.O. Ms. No.143, which Government Order itself is a fake one, and affirmative reliefs are being obtained, without bringing to the knowledge of the Court that the said G.O. Ms. No.143 has been held to be fake. This not only shows the guise in which orders are being obtained, but also the guile in which the petitioners are knocking on the doors of this Court and obtaining orders, thereby, eroding the finances of the State to which they are ineligible. To demonstrate the same, learned Addl. Government Pleader had placed certain decisions before this Court, in the recent past in which the learned Judges of this Court, as noticed above, and after adverting to the factual position and also taking note of the decision in *Devakadasham's case (supra)* this Court has not only rejected the relief sought for by the persons therein, but also reiterated the fake nature of G.O. Ms. No.143. In the decision in ***K.Pitchai - Vs - State of Tamil Nadu & Ors. (W.P. (MD) No.20326/13 dated 28.2.2018)***, a learned single Judge of this Court had even lamented



on the filing of several batches of writ petitions claiming monetary benefits by retired teachers where money of the tax payers is misused by unscrupulous elements under the pretext of their entitlement under one Government Order of the other. The learned single Judge had gone on further to express anguish at the misuse being perpetrated by the public officials by granting such arrears of pay to the teachers contrary to the pay rules in force without delving upon the source, origin and legality of the Government Order, which burns a hole in the financial position of the State.

25. In the above stated scenario, it becomes the ardent duty of this Court to see to it that the flow of petitions seeking relief as above by placing reliance on one Government Order or the other, is put an end to, as the multiplicity of the Government Orders, being passed for one person or the other, for reasons best known to the respondents, not only strikes at the clause of equality enshrined under the Constitution, but also leaves a gaping hole for miscreants to misuse the various Government Orders to their benefit, though they may not even be entitled for the same. The multiplicity of the Government Orders on this issue is plaguing the judicial system, and acts in detriment to the finances of the Government. Therefore, it is high time that the Government revisits the various Government Orders issued on this subject and correlate all the aspects necessary for the purpose and issue a composite Government Order covering the entire gamut relating to recognised aided and unaided private schools, so that not only a stop is put to the multiplicity of petitions filed before this Court, but also would entail safeguarding the finances of the State from being given to persons, who are not entitled to be a recipient of the same. While issuing a composite Government Order, the Government may also ponder over fixing responsibility on the officers who act in detriment to the said order, by passing orders, which are not in consonance with the directions issued so as to safeguard the erosion of the finance of the State by unscrupulous individuals.

26. The practice of the Government issuing Government Orders for fulfilling the needs of individual persons, for one reason or the other, should be put a stop to, as otherwise the clause of equality enshrined in the Constitution gets defeated. Composite guidelines have to be issued taking into consideration the different types of scenario that may arise and resorting to issuance of individual Government Orders should be curtailed. If for some reason, a particular eventuality, not foreseen and incorporated in the composite guidelines, arise, the Government, instead of issuing a separate Government Order concerning that particular case is concerned, should instead amend the composite Government Order issued so that the benefit accrues to all similarly placed persons and it does not act to the whims and caprice of the individuals, which alone would be the hallmark of equality and justice for the citizens.



27. To this end, this Court would like to point out that in the matter of compassionate appointments, which was a perennial problem resulting in the issuance of very many Government Orders, which was pressed into service at the whims and fancies of individual persons, at the behest of the order passed by this Court, finally a composite Government Order covering all the facets of compassionate appointment had been issued to put to rest the problem relating to compassionate appointment. Likewise, a comprehensive and composite Government Order in the above scenario would not only be a welcome addition, but would in effect lead to the efficient working of the Governmental machinery, which cannot be bent to the vagaries of one or other persons to their benefit. The Government shall take inputs of all the necessary parties while formulating the composite Government Order and issue the same at the earliest so that safeguard is made not only to the finances of the State, but also putting an end to the multiplicity of proceeding before this Court.

28. Registry is directed to communicate a copy of this order to the Chief Secretary to the Government, Secretary, Home Department, Secretary, finance Department and Secretary, Education Department, Government of Tamil Nadu, so that the authorities work in tandem and issue a composite Government Order incorporating all the necessities as pointed out above, as expeditiously as possible, so that the same can be applied uniformly to all the teaching and non-teaching staff in the recognized aided and unaided schools without deviation so that the multiplicity of litigations could be avoided.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

GLN

To

1. The Chief Secretary to Government
Government of Tamil Nadu
Fort St. George, Chennai - 9.
2. The Secretary to Government
Home Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.



3. The Secretary to Government
Finance Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.

4. The Secretary to Government
Education Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.

5. The Director of Elementary Education
Chennai - 6.

6. The District Elementary Educational Officer
Dindigul.

7. The Assistant Elementary Educational Officer
Dindigul.

+1 CC to M/s.SPL GP (SR-12539[F] dated 19/03/2021)

ORDER IN
W.P. (MD) NO. 10327 OF 2017
Pronounced on 18.03.2021

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VB(08.04.2021) 10P 9C