



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15007 of 2010

S.Radhakrishnan

..Petitioner

Versus

1. The Director of School Education,
Nungambakkam, Chennai - 600 006.
2. The District Educational Officer,
Perambalur, Perambalur District.
3. The Correspondent,
St. John Sangam,
Thanthai Hans Roever Hr. Sec. School,
Perambalur - 621 212.
4. The State of Tamil Nadu,
Rep. by its Secretary,
Education Department, Fort St. George,
Chennai - 600 009.

(R4 impleaded vide order, dated 13.04.2022 made in
W.M.P.No.9449 of 2022 in W.P.No.15007 of 2010) ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for all the records on the file of the respondent - Director School Education which culminated in O.Mu.No.13141/D2/E3/09, dated 11.11.2009, and quash the same and direct the respondents 1 to 4 to further continue the sanction and regularization for the post of Tamil Pandit in the 3rd respondent school on and from 02.11.1987 ending 03.12.1996 and consequently to regularize the entire service of the petitioner as continuous one from the date of joining 31.08.1984 till the date of his retirement 30.09.2017 and release Grant-in-aid, enabling the petitioner to get all attendant, seniority, monetary and pensionary benefits thereto, within a reasonable time.

(Prayer amended vide order, dated 13.04.2022 made in
W.M.P.No.9452 of 2022 in W.P.No.15007 of 2010).



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For Petitioner : Mr.C.Johnson

For Respondents: Mrs.E.Ranganayaki,
Additional Government Pleader
for RR-1 and 2

: Mr.V.Ganesan for R3

ORDER

The Writ Petitioner originally joined service in the third respondent School which is an aided minority institution in a sanctioned post with effect from 31.08.1984 and his appointment was approved and was drawing the aided pay from the Government upto 02.11.1987. At that point of time, aid in respect of the petitioner's post was discontinued. However, the matter was taken up by management as it was felt that the attempt to suddenly stop the aid without passing any orders of reducing the sanctioned posts or even re-deploying the sanctioned employees was erroneous.

2. Pending the request of the management with the respondent authorities, the petitioner continued to work in the same position, but was paid by the management. The request of the management was not considered and the management filed W.P.No.7788 of 1993 before this Court. By an order, dated 09.12.1998, this Court directed the respondents therein to consider the sanctioning of the 15 posts in accordance with the rules prevalent i.e., the G.O.Ms.No.525, Education, dated 29.12.1997, pursuant to which, the posts were sanctioned to the said school in accordance with the said G.O.Ms.No.525.

3. In the meanwhile, since the petitioner got employment in a Government post, he left the instant employment with effect from 03.12.1996 and got employed as Tamil Teacher in the Government schools. It is in these circumstances, the petitioner pressed that his services for the period from 31.08.1984 upto 03.12.1996 should be taken into account for all practical purposes as his employment in Government service is a continuous employment and he should be granted benefits including fixation of pay of arrears of pension etc.

4. After this Court permitted the petitioner to amend the relief, further opportunity was granted to the respondents to file additional counter affidavit. The respondents originally resisted the Writ Petition on the ground that as far as the period from 02.11.1987 to 03.12.1996 is concerned, the same was not under any sanctioned post and therefore, it cannot be taken into account. It is their further submission that pursuant to the Writ Petition filed by the management in W.P.No.7783 of



1993, only with effect from 26.03.2007, the additional four posts, namely one Tamil Pandit, three B.T Assistants were permitted in respect of the fourth respondent School and therefore, there wasn't any sanctioned post in the interregnum and thus, even though the petitioner was working continuously, the said period of service cannot be taken into account for any purpose.

5.Today also, the learned Additional Government Pleader, placing on record the written instructions given to her additionally, submitted that as far as the third respondent School is concerned by virtue of G.O.Standing No.481, dated 04.04.1990 totally 15 teaching and non-teaching posts were permitted until 01.11.1987. After that, the Writ Petition filed by the management, to continue the aid for the 15 posts was ordered only on 09.12.1998. Pursuant thereto, the posts were sanctioned only on 26.03.2007 in accordance with G.O.Ms.No.525, dated 29.12.1997. Therefore, since the service of the petitioner during 02.11.1987 to 03.12.1996 was as against a non-sanctioned post, there is no place in the rules to consider the said services during the period.

6.Heard Mr.C.Johnson, learned Counsel for the petitioner and Mrs.E.Ranganayaki, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 and Mr.V.Ganesan, learned Counsel appearing on behalf of the third respondent School.

7.The learned Counsel for the petitioner would submit that for no fault of him, the petitioner, who was duly appointed in a sanctioned post, in the year 1984, was thereafter left in lurch from 1987 in a post which is not sanctioned and the less amount of salary which the management could pay was not even enough for the petitioner to survive and after waiting for long, in the year 1996, when the petitioner got employment in Government Services, the petitioner joined the same. There was no break in service from the employment of the third respondent School and that of the Government School. Had the petitioner been in the service of the third respondent, when the Writ Petition was disposed off, care would have been duly taken to have sanctioned the post retrospectively and he would have got the benefit. Had the decision was also taken in earlier point of time, the petitioner would have got the benefit and his services would have been continuous. Therefore, only in the above peculiar circumstances, the anomaly arose and therefore, the impugned order refusing to count the said service for all purposes is liable to be quashed and the Writ Petition is liable to be allowed.

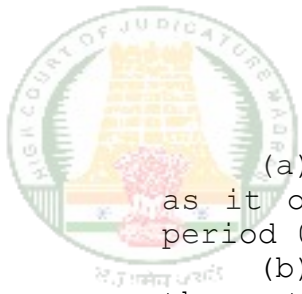


8. Opposing the said submissions, the learned Additional Government Pleader would submit that the petitioner, on his own volition, had left the employment in the aided post and had joined Government service as fresh entrant upon direct recruitment. Even thereafter, when the Writ Petition came to be disposed off by this Court, there was no order to retrospectively sanction the post with continuity. Therefore, as rightly mentioned in the impugned order, the interregnum period of 1987-1996 was in any recognised/sanctioned post and therefore, the petitioner cannot claim any benefit whatsoever.

9. The learned Counsel appearing for the management submits that the management was not at fault and when the aid was suddenly withdrawn, the management had taken steps duly and thereafter filed Writ Petition and order is passed. He would submit that the fact remains that in the year 1996, the petitioner upon getting Government Employment, joined the said post.

10. I have considered the rival submissions made on both the sides and perused the material records of the case. The peculiar facts and circumstances of the case has been stated supra whereunder the petitioner was initially working in the third respondent aided School under a sanctioned post and subsequently, worked in the same post, however though unaided, for a period between 1987-1996 and thereafter, joined Government service in the same post of Tamil Pandit. However, it may be seen that the petitioner has left the employment of the aided School and joined the Government service during the pendency of the Writ Petition and therefore, as a matter of right, he cannot claim that the entire service should be treated as continuous with all monetary and service benefits. At the same time, when the respondent/education authorities stopped the aid or disbanded the post for whatsoever reasons that may be, the petitioner, being a person working under a sanctioned post duly approved by them, ought not to have been left in lurch, but ought to have been re-deployed to some other school where there is a vacancy in the sanctioned post. Therefore, there is an anomalous situation arising in the instant case. Had the petitioner continued in the service with the management, the respondents would have considered his said case while passing the G.O in the year 2007 sanctioning the post.

11. Therefore, considering the totality of the circumstances, I hold that though the petitioner's services need not be taken into account for all purposes, at least for purposes of qualifying years of service for the purposes of pension, the said services between the years 1987-1996 shall also be counted and therefore, I am inclined to partly allow this Writ Petition on the following terms:-



(a) The impugned order, dated 11.11.2009 is quashed inasmuch as it omits to take into the service of the petitioner for the period 02.11.1987 to 03.12.1996 for all purposes;

(b) The respondents are directed to consider the service of the petitioner for the period of 02.11.1987 to 03.12.1996 for the purposes of calculating qualifying years of service for grant of pension alone;

(c) By taking into account the said period of service, the petitioner's pension has to be re-worked and notionally re-fixed;

(d) The petitioner has now been superannuated from service, the petitioner will not be entitled to any arrears, but will be entitled to the arrears of pension prospectively from the date of this order;

(e) The above said exercise shall be carried out by the respondents in respect of the petitioner, Tamil Teacher, within a period of four months from the date of receipt of copy of the order;

(f) There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Director of School Education,
Nungambakkam, Chennai - 600 006.
2. The District Educational Officer,
Perambalur, Perambalur District.
3. The Correspondent,
St. John Sangam,
Thanthai Hans Rover Hr. Sec. School,
Perambalur - 621 212.
4. The Secretary,
Education Department, Fort St. George,
Chennai - 600 009.

+lcc to Mr.C.Johnson, Advocate, S.R.No.29997
+lcc to the Government Pleader, S.R.No.30967

W.P.No.15007 of 2010

RSV(CO)

RGA(25/05/2022)