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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.33852 of 2013,
and M.P.No.1 of 2013

V.Baby

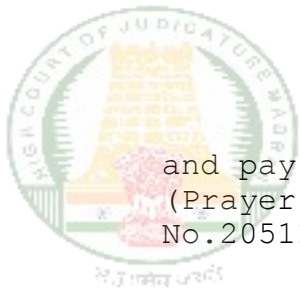
... Petitioner

Vs.

- 1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600009.
- 2.The Director of Elementary Education,
College Road,
Chennai - 600006.
- 3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600003.
- 4.The Educational Officer,
Corporation of Chennai,
Rippon Building,
Chennai - 600003.
- 5.The Assistant Educational Officer,
Corporation of Chennai,
Rippon Building,
Chennai - 600003.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the first impugned order issued by the fifth respondent in proceedings Ka.Thu.Na.Ka.No.C11/0016/2013 dated 30.10.2013 and the subsequent second impugned order issued by the fourth respondent in proceedings Ka.Thu.Na.Ka.No.M3/12198/2017 dated 06.03.2019 and quash the same and consequently, direct the respondents to count the period of services of the petitioner as Secondary Grade Teacher untrained from 23.10.1961 to 30.04.1968 as qualifying service for the purpose of pensionary benefits and consequently, revise all the terminal and pensionary benefits



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and pay the differential amount.

(Prayer Amended vide order dated 18.04.2022 made in WMP No.20511/2021) in WP No.33852 of 2013.

For Petitioner : M/s.Swathi Subramaniam

For Respondents: Mr.C.Selvaraj, [R1 & R2]
Additional Government Pleader
Mr.R.Gopinath [R3 to R5]

ORDER

The petitioner herein, was initially appointed in the Panchayat Union School, Srinivasa Nagar on 01.04.1974 as a Secondary Grade Assistant. Thereafter, the School was taken over by the Corporation of Madras, wherein, she continued to work as a Secondary Grade Assistant in the Corporation Primary School. After promotion as a Headmistress of the Middle School in Chennai Corporation, she retired from services in the year 2001. The claim of the petitioner is that prior to joining the Panchayat Union School in the year 1974, she had put in service as an untrained teacher for various periods from 23.10.1961 to 30.04.1968 under the Panchayat Union Middle School, Primary Aided Schools and Government Girls Higher Secondary Schools and therefore, these service periods as an untrained teachers, should be counted for the purpose of fixation of her pension. The petitioner's claim in this regard came to be rejected by the fifth and fourth respondents respectively, through the impugned orders dated 30.10.2013 and 06.03.2019, which are put under challenge in the present Writ Petition.

2. The main objection raised by the respondents/Corporation is that though the petitioner herein, had retired in the year 2001, there were no representations from her with regard to her claim of counting her past services as an untrained teacher and since the first representation was made only in the year 2013, there is an inordinate delay and latches. The other objection raised is that G.O.No.408, Finance (Pension) Department dated 25.08.2009, does not entitle the petitioner to have her past untrained services counted for the pensionary benefit.

3. On the ground of delay and latches, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of 'Union of India & others Vs. Tarsem Singh reported in '(2008) 8 SCC 648' and submitted that since her claim for counting of the past services is a continuing source of injury, she would be entitled for such a claim, even though there are latches on her part.



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4. In order to substantiate that her past services as an untrained teacher requires to be counted for pensionary benefits, the learned counsel for the petitioner placed reliance on Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

5. Incidentally, in identical circumstances, the past services of the Retired Headmaster in the Elementary Education Department were counted by the respondents and orders have been passed in G.O.Ms.No.43, School Education Department dated 02.03.1998 in the case of 'S.A. Subramanian' and G.O.Ms.No.1635 (B.2) Department, Finance (Pension) Department dated 20.10.1988 in the case of one 'B.Sanjeevi' Retired Headmaster.

6. It is no doubt true that the petitioner herein, had made a claim belatedly. However, in Tarsem Singh's case (supra), the Hon'ble Supreme Court had considered such a situation of delayed claim and was of the view that when the claim itself is a continuing source of injury and such claims would not affect the rights of third parties, the delay and laches may not be entitled for the purpose of favourable consideration. The relevant portion of the order reads as thus:-

..... "5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the



consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

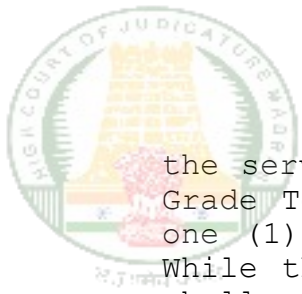
7. The aforesaid extract is self-explanatory. Hence, the objection of the learned counsel for the respondents/Corporation that the claim of the petitioner does not deserve consideration, need not be an impediment and they could be directed to consider it in the light of the above findings of the Hon'ble Supreme Court. However, when it comes to disbursement of the monetary benefits, the petitioner would be entitled for the arrears to a period of three years prior to the date of filing of the Writ Petition, as held in Tarsem Singh's case (supra).

8. Insofar as the entitlement of the petitioner's claim to include her past services in a Government School as an untrained teacher is concerned, Rule 11(4) of the Tamil Nadu Pension Rules, 1978, provides that half of the services rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis in respect of Government employees absorbed in a regular service shall be counted for retirement benefits along with a regular service, subject to certain conditions laid down therein.

9. Thus, when Rule 11(4) of the Tamil Nadu Pension Rules, 1978, facilitates inclusion of half of the petitioner's past services in a non-provincialised post, placing reliance on G.O.No.408, Finance (Pension) Department dated 25.08.2009 and submitting that the petitioner's case cannot be considered, is illegal.

10. In view of the aforesaid provision under the Tamil Nadu Pension Rules, 1978, the half of the petitioner's past services requires to be counted for extending the benefits to her. However, the arrears of such benefits could be restricted for three years prior to the date of filing of the Writ Petition, in view of the belated approach of the petitioner in making a claim.

11. In the light of the above findings, the first impugned order passed by the fifth respondent in proceedings Ka.Thu.Na.Ka.No.C11/0016/2013 dated 30.10.2013 and the subsequent second impugned order passed by the fourth respondent in proceedings Ka.Thu.Na.Ka.No.M3/12198/2017 dated 06.03.2019, are hereby quashed. Consequently, there shall be a direction to the respondents herein, to count half of the period of services of the petitioner as an untrained Secondary Grade Teacher from 23.10.1961 to 30.04.1968, as qualifying service for the purpose of pensionary benefits and consequently, revise all the terminal and pensionary benefits. The petitioner is also called upon to give a representation enclosing a copy of this order, including



the service certificates of her untrained service as a Secondary Grade Teacher from 23.10.1961 to 30.04.1968, within a period of one (1) week from the date of receipt of a copy of this order. While the respondents passes the order as indicated above, they shall restrict the arrears of pension for a period of three years prior to the date of filing of the Writ Petition i.e. from 10.12.2013.

12. With the above directions, this Writ Petition stands allowed. No costs. Connected miscellaneous petition 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 - 600009.
- 2.The Director of Elementary Education,
College Road,
Chennai - 600006.
- 3.The Commissioner,
Corporation of Chennai,
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Corporation of Chennai,
Rippon Building,
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- 5.The Assistant Educational Officer,
Corporation of Chennai,
Rippon Building,
Chennai - 600003.



+1cc to Mr.R.Prem Narayan, Advocate SR.No.25979

+1cc to Mr.R.Gopinath, Advocate SR.No.26238

+1cc to Special Government Pleader SR.No.26358

W.P.No.33852 of 2013

RP (CO)
GMY (27/04/2022)