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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2022

PRONOUNCED ON : 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.2183 OF 2018

E.P.Jayaraman

...Appellant

Vs.

1. The Commissioner, Panchayat Union,
Sholingur,Vellore District.
2. The District Elementary Educational Officer,
Vellore Division, Vellore.
3. The District Collector,
Vellore District, Vellore.
4. The Director of Elementary Education,
DPI Complex, College Road, Chennai-600 006.
5. The Director of Pension,
259, Anna Salai, 3rd Block, 2nd Floor,
DMS Teynampet, Chennai-600 018.
6. The Accountant General,
361, Anna Salai, Chennai-600 018.
7. The Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.

... Respondents

Prayer:

Writ appeal is filed under clause 15 of the Letter Patent
praying to set aside the order dated 05.06.2018 in W.P.No.22063
of 2016.



Prayer in W.P.No.22063 of 2016:-

Writ Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the sixth respondent made in Pen 16/1/Pt.5907 dated 02.05.2016 and quash the same and direct the sixth respondent to sanction the pension to the petitioner in terms of G.O.Ms.No.37 (School Education) dated 05.01.1983.

For Appellant	:	Mr.M.Palani
For Respondents	:	Mr.P.Ananda Kumar
1, 3 and 5		Government Advocate
For Respondents	:	M/s.S.Mythreya Chandru
2, 4 and 7		Spl. Govt. Pleader (Education)
For Respondent 6	:	Ms.Hema Muralikrishnan

JUDGMENT

MOHAMMED SHAFFIQ, J.

This intra-court appeal has been filed against the order of the learned Single Judge in W.P.No.22063 of 2016 whereby the appellant's prayer to quash the record/ communication of the Accountant General/ 6th respondent dated 02.05.2016 and to further direct the 6th respondent to sanction the pension to the appellant/ writ petitioner in terms of G.O.Ms.No.37 (School Education) dated 05.01.1983 was rejected.

2.Brief facts:

The appellant joined as a Secondary Grade Headmaster in Nehruji Aided School at Edapalayam Village, Vellore District. After serving in the above institution, the appellant resigned from service in September 1974. Subsequent to his resignation, Secretary to Government (School Education) issued a Government Order in G.O.Ms.No.1015 dated 05.06.1981 with regard to pension to staff of Non-Government Educational Institutions, teaching staff of aided and local body schools and teaching staff of aided colleges who resigned before the relevant crucial dates. The scope of the said G.O.Ms.No.1015 dated 05.06.1981 was clarified vide G.O.Ms.No.37 dated 05.01.1983.

The appellant after his resignation in September 1974, had not made any claim with regard to pensionary benefits in terms of G.O.Ms.No.37 dated 05.01.1983 until 28.11.2005, when vide letter dated 28.11.2005, the appellant claimed pension on the basis that he had worked as Secondary Grade Teacher for over



eleven and half years during the period from 1967 to September 1974. In the said communication, the appellant had stated that the claim for pension was being made on the basis of a Judgment of the Madurai Bench of this Court in W.P.No.14732 of 2013 dated 19.09.2014 which was published in local dailies wherein a similarly placed Teacher from Madurai, who resigned in the year 1972, had filed a writ petition in the year 2013 claiming pension in terms of G.O.Ms.No.37, and this Court was pleased to direct the concerned authorities to consider his case for pension after finding that he had resigned from service in terms of G.O.Ms.No.37 dated 05.01.1983.

The 6th respondent/ Accountant General vide impugned communication dated 02.05.2016 addressed to the Assistant Elementary Educational Officer, Sholingur, Vellore District proceeded to deny the pensionary benefits to the appellant on the premise that the appellant had resigned from service in September 1974 and that resignation entails forfeiture of past service and hence pensionary benefits are not admissible.

Before proceeding further, it may be relevant to note that in support of the appellant's claim that he had been in service during the period from 1963 to 1974, the following documents were found during the inspection by the Assistant Elementary Educational Officer, Sholighur on 22.01.2016:

- i) The Appointment order of the teacher.
- ii) The School Registration of the teachers for the period from 29.04.1963 till June 1964.
- iii) Remarks of the Deputy Inspector of the School Education.
- iv) The document of CARE, Coimbatore under reference No.R.C.No.2C3/64, dated 01.01.1965.
- v) The Record Sheets issued by Mr.E.P.Jayaraman/ appellant herein, to certain students during his period of service as Headmaster of the School. Importantly, the 6th respondent while rejecting the appellant's claim for pension has not raised any doubt about the fact that the appellant had been in service during the said period and had resigned in September 1974. The denial of pensionary benefits vide impugned communication dated 02.05.2016 was only on the premise that the appellant/ writ petitioner had resigned and that resignation would entail forfeiture of past service.

3. Aggrieved by the above order of the 6th respondent, the appellant challenged the same by way of writ petition in W.P.No.22063 of 2016. The writ petition came to be dismissed by the learned Single Judge on the basis of the following reasons:

- a. There was no evidence produced by the appellant to show that he had resigned from service in a particular month and year and that the certificate dated 22.01.2016 and 23.01.2016 issued



by the retired Junior Deputy Inspector of School, Walajpet cannot be relied upon.

b. The Accountant General had come to the conclusion that the appellant resigned from service in September 1974, though, there was no evidence to support the said fact.

c. The appellant/ writ petitioner had approached the Court after 4 decades since his termination/ resignation and thus the burden was on the appellant/ writ petitioner to prove his case that he had resigned and had not deserted or abandoned the job, by filing necessary documents.

In view of the same, the appellant's claim was treated as stale and the learned Judge dismissed the writ petition.

4. It is the submission of the learned counsel for the appellant that the learned Judge ought to have seen that G.O.Ms.No.37 dated 05.01.1983 was issued by the government to extend benefits to staffs in Non-government educational institutions, teaching staff of aided and local body schools and teaching staff of aided colleges who resigned before the relevant/ crucial date.

5. To the contrary, the counsel for the respondents submitted that the order of the learned Single Judge is well-reasoned and does not warrant interference inasmuch as the appellant had resigned from service thereby forfeiting his service and has also made a claim after close to 4 decades and thus, the claim is hit by laches.

6. Heard both sides, perused the materials on record. We shall proceed to examine the validity/ legality of the reasons given by the learned Judge to dismiss the writ petition.

7. The first reason given by the learned Judge to dismiss the writ petition viz., that the appellant/ writ petitioner had failed to produce documents to substantiate his claim that he resigned from service in a particular month and year cannot be justified in view of the following reasons:-

a. We find that the Government Order itself records that it would be very difficult to produce service particulars to claim pension due to the passage of time. Conscious of the practical difficulties in producing documents/ service registers, the Government Order itself records "to obviate hardship and difficulties the authorities sanctioning pension in Govt.memo no.21344/E6/68-5, Education dated 18.11.1968 authorised to sanction the minimum pension in all such cases where Teacher's Service Registers are not available or it is difficult to verify service particulars of the applicant".



Thus, the reasoning of the learned Judge insofar as rejection of pensionary benefits on the ground of not furnishing evidence to show that the appellant resigned on a particular month/year i.e., September 1974 runs contrary to the Government Order which recognises the difficulty in producing the documents.

b. In any view, the order of the 6th respondent dated 02.05.2016, which was the subject matter of challenge in the writ petition before the learned Judge, rejected the appellant's claim only on the premise that the appellant had resigned from service in 1974 which entails forfeiture of service. There is no doubt expressed by the 6th respondent as to the factum of the appellant having rendered the qualifying service (or) having resigned in September 1974. In that view of the matter, the reasoning of the learned Judge clearly traverses beyond the impugned order on the basis of the oral submission of the learned counsel for the 6th respondent. It is settled principle that any public order must be decided on the basis of what is stated in the said order and cannot be improved upon either orally or by counter, for, in that event, an order which is initially bad and invalid, on the basis of counter or an oral argument would become valid. The above principle laid down by the Hon'ble Supreme Court in the case of Mohinder Singh Gill and another vs. the Chief Election Commissioner, New Delhi and others reported in AIR 1978 SC 851, has been consistently followed.

c. The above reasoning of the learned Judge overlooks the fact that the following documents were in fact furnished in support of the claim that the appellant had been in service during 1963 to 1974 and had resigned in September 1974:-

- i) The Appointment order of the teacher.
- ii) The School Registration of the teachers for the period from 29.04.1963 till June 1964.
- iii) Remarks of the Deputy Inspector of the School Education.
- iv) The document of CARE, Coimbatore under reference No.R.C.No.2C3/64, dated 01.01.1965.
- v) The Record Sheets issued by Mr.E.P.Jayaraman/ appellant herein, to certain students during his period of service as Headmaster of the School.

The above reasoning is thus contrary to the material on record and thus cannot be sustained.

8. The other reason which weighed with the learned Judge to dismiss the writ petition is the fact that the appellant had approached the Court after a huge delay of 42 years and thus the claim itself was treated as being stale and held that such a



belated/stale claim cannot be entertained.

We are conscious of the fact that a belated service related claim will be rejected on the ground of delay/ laches/ limitation. However, the above rule is not without exception and one of the exception to the above rule is the case relating to a continued wrong/ relief/ benefit/ right. It has been consistently held that pension is a continuous relief/ benefit/ right which an employee is entitled to and importantly it does not affect any 3rd party rights and thus the denial of the claim to pension only on the ground of laches may not be justified. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court wherein it was held that a continuous wrong/ relief/ benefit/ right cannot be rejected only by applying the doctrine of laches inasmuch as the denial of benefit such as pension continues to occur month after month giving raise to a fresh cause of action based on the continuing wrong/ relief/ benefit/ right. The following extracts of the said judgments would make the above position clear:

i) Union of India v. Tarsem Singh, reported in (2008) 8 SCC 648:

"7. 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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

(emphasis supplied)

ii) State of M.P. v. Yogendra Shrivastava, reported in (2010) 12 SCC 538:

"18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. (See M.R. Gupta v. Union of India [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] and Union of India v. Tarsem Singh [(2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] .)

(emphasis supplied)

Importantly, on both occasions, the Hon'ble Supreme Court after holding that the petitioner's claim to pension or re-fixation of pay ought not to be rejected on the ground of laches has proceeded to restrict the relief to 3 years before the date of filing the writ petition or from the date of admission of the



writ petition, whichever was lesser. Thus, though the appellant may be entitled to pension, their entitlement would be restricted to 3 years before the date of filing of the writ petition.

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We are also fortified in coming to the above conclusion inasmuch as it is trite law that a liberal interpretation must be adopted while dealing with a claim for pension inasmuch as the provisions providing for payment of pension are beneficial in nature, which ought to be interpreted more liberally to favour grant rather than refusal of the benefit. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part.

9. Having found that the two reasons which weighed with the learned Single Judge while dismissing the appellant/ writ petitioner's claim for pension is unjustified and unsustainable, it may be necessary to deal with the reasons set out by the 6th respondent to deny the appellant/ writ petitioner's claim to pension viz., the appellant/ writ petitioner had resigned from service and resignation entails forfeiture of services. We find that the said question has already been examined in the following judgment of the Division Bench of this Court wherein the above question namely resignation and its consequence/ impact on the claim of pension in terms of the above Government Order came up for consideration before the Division Bench of this Court in W.A.No.606 of 2001 wherein it was held as under:

"6. As regards "those who retired before the crucial dates" in the case of Non-teaching staff etc., who were given pension benefits from 05.06.81, there are specific general instructions in para 6 of G.O. 1015/5.6.81 permitting the allowing of pension to "Resigned" persons also; but there are no such general instructions permitting the allowing of pension to "Resigned" teachers (who were given benefits from 01.03.68 as per G.O.Ms.No.1505/24.09.68). Orders are however being issued in individual cases of such teachers who had "resigned" before the crucial dates. In this context, the Accountant General has asked for a clarification on the following two points:

(i) Whether it is the intention of the Government to allow pension to all the teaching staff of Aided and Local Body Schools and Teaching Staff of Aided College who had "Resigned" from service prior to the respective crucial date/dates of the respective Government Order introducing pensionary benefits ?

(ii) and if so, whether they are eligible to draw pension from 01.03.68 with reference to Government



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Order Ms.No.1505, Edn., dated 24.09.68 read with Government Memo No.21344/E.6/68-5 Ed., dated 18.11.68.

The Government now clarify point (i) above in the affirmative i.e the staff in question may be sanctioned pension by the respective authorities competent to sanction pension (without the need for any specific orders of any higher authority or of Government condoning the "resignation" in each individual case).

7. It is therefore clear that a teacher who has resigned even after crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government Condoning the resignation in each individual case. This Would clinch the issue in favour of the respondent teacher and we find that the learned single Judge has also relied on the aforementioned Government Order, G.O.Ms.No.37. This is apart from the fact that even the language of the Government Order dated 05.06.1981 and more particularly of paragraph 6 (ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the pension scheme. The provision has to be interpreted as giving concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme....."

(emphasis supplied)

The other decision of this Court which dealt with G.O.Ms.No.37 is reported in 2019 SCC Online Mad 2136, wherein on examination of the above Government Order, it was held as under:

"6. A perusal of the above mentioned Government Order Ms. No. 1490, Education, dated 26.12.1985, would show that persons who resigned or retired, prior to 05.06.1981, would be given pensionary benefits, because they could not have anticipated pensionary benefits. The letter dated 26.12.1985 makes it clear that those persons, who have resigned, after the crucial date that is 05.06.1981, will not be allowed any pensionary benefits.

.....

13. A cursory look at the above said judgments would show that none of the judgments would apply to the facts of the present case. G.O.Ms. No. 1015, Education Department, dated 05.06.1981, makes it clear that pension can be sanctioned only in cases, where the incumbents has resigned prior to the crucial dates



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05.06.1981, for the reason that they could not have foreseen the institution of pension scheme, at the time when they resigned. G.O.Ms.No.37, Education Science and Technology Department, dated 05.01.1983, clarifies that persons who had resigned prior to 05.06.1981 alone and other crucial dates pertaining to teaching staffs in various institutions, are entitled to pensionary benefits and that too only from the date of 05.06.1981 meaning thereby that they would not be entitled for any amount prior to 05.06.1981. "

10. The reasoning of the 6th respondent in the impugned order dated 02.05.2016 viz., that the appellant/ writ petitioner had resigned from services and resignation would result in forfeiture of services is clearly unsustainable in the light of the above judgments of the Division Bench of this Court, wherein it has been held that even if a teacher had resigned, the pensionary benefits cannot be denied more so when in the instant case, admittedly, the appellant/ writ petitioner has resigned in September 1974 i.e., prior to 05.06.1981, which has been treated by the above Division Bench as the crucial date and the persons/ staff/ employee retiring prior to the said date is held to be eligible to the benefit of pension in terms of the said Government Order.

11. For all the above reasons, we find that the order of the learned Single Judge is liable to be set aside and the writ appeal stands disposed of with the direction to the Government to finalise the pension of the appellant/ teacher within 3 months from the date of receipt of a copy of this order. We intend to make it clear that the pensionary benefits shall be restricted to 3 years prior to filing of the writ petition. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Commissioner, Panchayat Union,
Sholingur, Vellore District.



2. The District Elementary Educational Officer,
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7. The Secretary to Government, School Education Department,
Fort St. George, Chennai-600 009.

+1cc to M/s.M.Palani, Advocate, S.R.No.16899

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.17203

+1cc to the Government Pleader, S.R.No.17462

W.A.No.2183 of 2018

PA(CO)
RLP(28/03/2022)