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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.13842 OF 2020

B.Rajeswaran

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

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

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to pass orders for revision of pay and other retirement benefits from the date of retirement on 30.05.2016 by considering the services rendered by the petitioner in St.Paul's Matric Higher Secondary School from 02.04.1984 to 04.12.1989, in the light of order passed in G.O.Ms.No.143, Education (V2) Department dated 30.01.1987 and the orders passed in W.P.No.7627 of 2006 dated 01.04.2013 by considering the representation submitted by the petitioner dated 08.09.2016 and 03.05.2017 with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Nanmaran
Additional Government Pleader
For R1 to R3



O R D E R

The prayer in the writ petition is for a Mandamus directing the respondents to pass orders for revision of pay and other retirement benefits from the date of retirement on 30.05.2016 by considering the services rendered by the petitioner in St.Paul's Matric Higher Secondary School from 02.04.1984 to 04.12.1989, in the light of order passed in G.O.Ms.No.143, Education (V2) Department dated 30.01.1987 and the orders passed in W.P.No.7627 of 2006 dated 01.04.2013 by considering the representation submitted by the petitioner dated 08.09.2016 and 03.05.2017 with all consequential and other attendant benefits.

2. The petitioner was initially appointed as Post Graduate Assistant (Maths) on 06.03.1984 in St.Paul's Matric Higher Secondary School, Neyveli, with time scale of pay. While so, he was appointed as B.T. Assistant (Maths) in Thiru Kamaraj Municipal Higher Secondary School, Villupuram, through Teachers Recruitment Board, vide proceedings dated 30.11.1989 and he joined the post on 04.12.1989 and subsequently, promoted as P.G. Assistant (Maths) on 23.12.1992. Thereafter, the petitioner was promoted as Headmaster in the year 2009 and transferred to Government Higher Secondary School, Sangeethamangalam, Villupuram District in the year 2013.

3. While so, the petitioner reached the age of superannuation and retired from service on 30.05.2016 and he was settled with all retiral and pensionary benefits. It is the grievance of the petitioner that the services rendered by him in St.Paul's Matric Higher Secondary School from 02.04.1984 to 04.02.1989 was not taken into consideration for service and pensionary benefits. In this regard, the petitioner has placed reliance on G.O.Ms.No.37, Education Department dated 05.01.1983 which stipulates that service rendered in a recognized unaided schools can be taken into consideration for fixation of pay and pension and based on the same, G.O.Ms.No.143, Education (V2) Department dated 30.01.1987 came to be passed, in and by which one Rev.Fr.Stanislaus M.Fernandez, Headmaster, St.Bade's Anglo Indian Higher Secondary School, Madras was granted the benefit of pay fixation and pension by counting the services rendered in the recognized unaided institution. Following the said Government Order, a writ petition was filed by a similar placed person in W.P.No.7267 of 2006 and vide order dated 01.04.2013, this Court directed the respondents to consider the services rendered by the petitioner in Matriculation School in respect of fixation of pay and pensionary benefits within a stipulated time. Based on the aforesaid Government Order as well as the



order passed by this Court, the petitioner has submitted a representation to the third respondent on 08.09.2016, but so far no order has been passed and hence, the petitioner has filed the present writ petition.

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4. Mr.V.Nanmaran, learned Additional Government Pleader for the respondents submitted that the order dated 01.04.2013 in W.P.No.7627 of 2006 has been challenged in W.A.No.1267 of 2014 and W.A.No.40 of 2015, wherein a Division Bench of this Court, vide judgment dated 05.07.2018, has elaborately considered the aforesaid Government Order and observed as follows:

"11. We have considered the rival submissions. It is unfortunate that the decision in S.Devakadashams case, referred to supra, wherein the validity of G.O.Ms.No.314 dated 12.12.1999 was upheld, was not brought to the notice of the Division Bench which subsequently considered the very same issue in Gabriel Jelestins case. While the judgment of the Division Bench in S.Devakadashams Case, takes into account the impact of the Government Orders vis-a-vis the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules made there under, the subsequent judgment of the Division Bench proceeds, on the basis of G.O.Ms.No.18 and G.O.Ms.No.143. We are constrained to point out that in a later judgment, a learned Single Judge of this Court in K.Pitchai v. The State of TamilNadu made in WP (MD) No.20326 of 2013 dated 28.02.2018, has after referring to the various Government Orders and found that the Government Order in G.O.Ms.No.143, Education (D2) Department, dated 30.01.1987 does not exist at all and it is a fake Government Order. In view of the above said conclusion of the learned Single Judge and the fact that the decision of the subsequent Division Bench was rendered in ignorance of the earlier Division Bench, the dictum of the earlier Division Bench, which is more elaborate, is entitled to more credence than the decision of the subsequent Division Bench, the Honble Supreme Court in Sri Jagannath Temple Managing Committee v. Siddha Math and Others, reported in 2015 (16) SCC 542, has held that a subsequent decision of the Co-equal Bench rendered in ignorance of the earlier decision of the Division Bench cannot be said to be a binding precedent.

12. A learned Single Judge (Honble Mr.Justice M.Srinivasan), as he then was, of this Court in The



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Special Tahsildar No.III v. Rangasamy Reddiar, reported in 1988 (1) MLJ 317, had after referring to the judgment of the Full Bench of Patna High Court reported in AIR 1897 Patna 191, had held that when there are conflicting judgments of Co-equal Benches, it is open to the subsequent Bench to follow the decision which states the law more elaborately and accurately. Thus, looked at from any angle, the judgment of the Division Bench in Gabriel Jelestins case, rendered in ignorance of the earlier Division Bench Judgment in S.Devakadashams case, cannot be treated as a binding precedent. Further, the judgment of the Division Bench in Gabriel Jelestins case has taken note of the Government Orders in G.O.Ms.No.143, which has been held to be a fake Government order by this Court in WP (MD) No.20326 of 2013.

13. In view of the above, we are constrained to follow the judgment of the Division Bench in S.Devakadashams Case, Reported in 2006 (4) MLJ 1580. in view of the categorical pronouncement of the Division Bench in S.Devakadashams Case, with which we agree, we are of the considered opinion that the judgments impugned in these Appeals viz., the judgment in WP No.26885 of 2013 and judgment in WP No.7627 of 2006 directing conferment of the benefits on the respondents in these Writ Appeals deserve to be set aside and they are accordingly set aside. The Writ Appeals stand allowed and both the Writ Petitions will stand dismissed. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

The aforesaid order passed in the writ appeal was also challenged before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No.9539/2021 and it was dismissed by the Hon'ble Apex Court on 13.12.2021.

5. Considering the facts and circumstances as well as the decision rendered by the Division Bench of this Court dated 05.07.2018 in W.A.No.1267 of 2014 rejecting the conferment of benefits, vide G.O.Ms.No.143 dated 03.01.1987, as confirmed by the Hon'ble Supreme Court, the claim of the petitioner cannot be considered.



6. Accordingly, this Writ Petition stands dismissed. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Villupuram District,
Villupuram.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.8470
+1cc to the Government Pleader, S.R.No.8320

W.P.NO.13842 OF 2020

GPL(CO)
PBS/21/02/2022